

United States  
Circuit Court of Appeals  
For the Ninth Circuit. /

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BANK OF TEHACHAPI, a corporation,  
Appellant,

vs.

CUMMINGS RANCH, INC., a corporation,  
Appellee.

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Transcript of Record

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Upon Appeal from the District Court of the United  
States for the Southern District of California,  
Northern Division.

FILED

FEB - 6 1940

PAUL P. O'BRIEN,  
CLERK



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**Circuit Court of Appeals**  
**For the Ninth Circuit.**

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# INDEX

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

Page

## Appeal:

Designation on, Appellant's .....	91
Designation on, Appellee's .....	96
Notice of.....	31
Statement of Points on.....	92
Attorneys, Names and Addresses of.....	1
Certificate of Clerk to Transcript of Record.....	32
Certificate of Conciliation Commissioner.....	26
Designation, Appellant's, on appeal.....	91
Designation, Appellee's, on appeal.....	96
Judgment, Oct. 23, 1939.....	28
Notice of Appeal .....	31
Order denying petitions for review of Bank of Tehachapi .....	28
Order of Conciliation Commissioner fixing rental	2
Order Reversing Conciliation Commissioner's Order .....	4
Petition for review of order, dated March 25, 1939 .....	9
Exhibits to Petition for Review:	
A—Motion to Dismiss .....	12
B—Motion for order authorizing bank to foreclose .....	14

	Index	Page
Petition for review of order, dated April 5, 1939 .....		16
Exhibit to Petition for Review:		
A—Order of Conciliation Commission- er approving appraisal and fixing rental .....		20
Reporter's Transcript (for detailed index see "Testimony") .....		34
Statement of Points on Appeal.....		92
Testimony .....		34
Proposal of Cummings Ranch for Compo- sition or Extension .....		66
Motion by Petitioner to Dismiss Proceed- ings .....		70
Proceedings before Conciliation Commis- sioner Samuel Taylor, November 19, 1938: Exhibits for Bank of Tehachapi:		
1—Statement of Cummings Ranch, Inc. ....		47
2—Balance Sheet of Cummings Ranch .....		49
Witnesses for Petitioner:		
Cummings, Edward G.		
—direct .....		34
—cross .....		63
—recalled, direct .....		73
—cross .....		75

Index

Page

Ancker, Albert

—direct ..... 65

Proceedings before Conciliation Commissioner—Hearing on Petition for Appointment of Supervisor, etc., January 20, 1939:

Witnesses for Petitioner:

Cummings, Edward G.

—direct ..... 80

Hill, Russell

—direct ..... 81

—cross ..... 85

—redirect ..... 86

Ancker, Albert

—direct ..... 87





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\*Page numbering appearing at foot of page of original certified Transcript of Record.

In the District Court of the United States for the  
Southern District of California, Northern Di-  
vision.

No. 4927

In Proceedings under Section 75 and 75 (s) of the  
Bankruptcy Act

In the Matter of

CUMMINGS RANCH, INC., a corporation,  
Debtor.

ORDER OF CONCILIATION COMMISSIONER  
FIXING RENTAL, ETC.

The matter of fixing the rental value and approv-  
ing the report of the appraiser on the property  
of the debtor herein having come on for hearing  
before the Honorable Samuel Taylor, Conciliation  
Commissioner, at an meeting of the creditors of  
said debtor held January 25, 1939, at 10 o'clock  
A. M. at Bakersfield, California, and William S.  
Marks, attorney for debtor herein appearing per-  
sonally, and various creditors being personally pres-  
ent, and evidence on the matter having been heard  
and the report of the appraisers being filed and said  
Conciliation Commissioner being fully advised in  
the premises.

It is hereby ordered, adjudged and decreed as  
follows:

1. That the report of the appraiser heretofore  
appointed to appraise the property of the debtor

herein, appraising the following described property, to-wit:

5009 acre farm and stock ranch situate in Sections 31, T. 32 S., R. 32 E., M. D. B. & M.; and in Sections 3, 4, 5, 8, 9, 10, 14, and 16 in T. 11 N., R. 16 W., S. B. B. & M., all in Kern County, California,

at Forty thousand one hundred dollars (\$40,100.00) be approved.

2. That the report of said appraiser appraising the personal property as follows, to-wit:

Miscellaneous household goods and furnishings; 15 horses; 700 head of cattle classified as cows, bulls, 3-yr. old steers, 2 yr. old steers, yearlings, and calves; 500 head of poultry; one 1930 Model A Ford automobile; one harvester; 2 mowers; 1 hay rake; 1 tractor; 3 saddles; one radio;

at Thirty thousand five hundred sixty-five dollars (\$30,565.00) be approved;

3. That all of the property of the debtor be set aside to said debtor for its use and occupancy;

4. That the reasonable rental value of the property of the debtor not [21] exempt is the sum of Seven Hundred fifty Dollars (\$750.00) per annum, to be paid as follows, to-wit:

\$375.00 on July 1, 1939; and  
\$375.00 on December 31, 1939,

and on the 1st day of July and the 31st day of December of each and every year hereafter com-

mencing July 1, 1939; that the said monies shall be paid to Conciliation Commissioner and shall be distributed by him as follows:

- (1) To the payment of taxes, improvement liens, county and State Taxes, or assessments;
- (2) That the balance to be paid to the creditors of said debtor as their priority and interest appear.

5. That all judicial action and official proceedings in any Court or under the direction of any official against the debtor or any of its property be stayed for a period of three years and that during such period of three years the debtor shall be permitted to retain possession of all or any part of said property in the custody and under the control and supervision of the Court.

Dated: Feb. 2, 1939.

SAMUEL TAYLOR

Conciliation Commissioner.

[Indorsed]: Filed Feb. 13, 1939. [22]

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[Title of District Court and Cause.]

ORDER REVERSING CONCILIATION COMMISSIONER'S ORDER

The petitions for Writ of Review of Bank of Tehachapi for an order to vacate and set aside the order of the Conciliation Commissioner denying

Bank of Tehachapi motion for an order allowing the Bank to take all and any necessary steps that it might desire, to foreclose its chattel mortgage or any other steps authorized by law to enforce settlement of the notes secured by the said chattel mortgage, and to set aside the order of the Conciliation Commissioner refusing to make a recommendation to the Judge, in writing, that the petition of Cummings Ranch, Inc. be dismissed, and the recommendation of the Conciliation Commissioner to the Judge that it not be dismissed; and for an order dismissing said petition of Bankrupt, said petition for review being upon the Conciliation Commissioner's orders of January 20, 1939 and February 2, 1939, came on regularly for hearing before the above entitled Court on Monday, February 20, 1939, before the Honorable Leon R. Yankwich, C. W. Johnston appearing as attorney for the Petitioner, and William S. Marks appearing as attorney for Bankrupt, and after hearing upon said petition and argument by counsel, the same was submitted to the Court for its consideration and decision, and from the records and files in the above proceeding, and from the evidence introduced before the Conciliation Commissioner, transcripts of which evidence were forwarded with the Writ of Review, the Court finds: [23]

That the extension to debtor made by Conciliation Commissioner's order of February 2, 1939, fixing rental, would allow debtor to appropriate the property of Bank of Tehachapi, being mortgagee under

chattel mortgage, for debtor's benefit; and the Court finds that there is due to the Bank of Tehachapi upon said promissory notes certain sums of money exceeding \$30,000.00, which notes are secured by a chattel mortgage covering all bankrupt's cattle, consisting of 800 or more head, branded with CL on left hip and having an ear mark of crop and hole in left ear, and shoestring in right ear, together with all increase thereof, which mortgage was recorded in Book 581, page 455 of Official Records of Kern County, California, and that there is a second lien upon said cattle, being a chattel mortgage from said bankrupt to J. J. Lopez in the sum of approximately \$12,000.00, and that the appraisal made by the appraiser and approved by the Conciliation Commissioner did not appraise each article of personal property separately, and did not list and designate each kind of personal property, and that the rental value of \$750.00 per year required to be paid by the bankrupt under the Conciliation Commissioner's order of February 2, 1939, fixing rental, is not a fair and reasonable rental, and that in order to protect the Bank of Tehachapi from loss under its chattel mortgage and in order to conserve the security, it is necessary that a sufficient amount of cattle be sold to net \$10,000.00 to be paid to the Bank of Tehachapi within a reasonable time, which is on or before May 15, 1939.

Now, therefore, it is ordered, adjudged and decreed, as follows:



1. That the said orders of the Conciliation Commissioner above referred to and made on January 20, 1939 and February 2, 1939 be and the same are hereby reversed. [24]

2. That the Conciliation Commissioner have the appraiser, within ten days after a certified copy of this order has been delivered to the Conciliation Commissioner, appraise each and every article of personal property separately, excepting articles of the same class and nature, which can be appraised together.

3. That the Conciliation Commissioner take additional evidence as to what is the reasonable rental value of the property to be retained by the bankrupt in the custody and under the supervision and control of the Court, and make an order fixing the rental value, the same to be done within fifteen days after the date a certified copy of this order is delivered to the Conciliation Commissioner.

4. That the Conciliation Commissioner hear evidence, at the same time and place as the hearing on the reasonable rental value, as to the need of a supervisor to supervise the care of the cattle, under the order of the Court and make his recommendation.

5. That the bankrupt shall request the Conciliation Commissioner to cause to be sold at public auction a sufficient number of cattle to bring at least \$10,000.00, which amount must be paid net to the Bank of Tehachapi at the time of the sale, but not later in any event than May 15, 1939, pro-

vided, however, that any cattle may be sold at private sale at any time upon request of debtor and the two mortgagees, or upon five days' notice to the mortgagees and then upon order of Court.

If the debtor fails to comply with any of the terms, conditions or provisions of this order then the Conciliation Commissioner, upon motion of the Bank of Tehachapi after not less than five days' notice upon either the bankrupt or one of the bankrupt's attorneys, shall recommend to the United States District Judge, before whom the matter is pending, that the adjudication be set aside and vacated, and that the petition of the [25] bankrupt and the debtor's petition be dismissed, and the adjudication shall then be vacated and the petition dismissed as provided by the Bankruptcy Act, or in lieu of dismissal the Bank of Tehachapi may request and the Conciliation Commissioner may recommend to the Court that the Bank of Tehachapi be permitted to take any and all necessary steps to enforce settlement of its notes by foreclosing the chattel mortgage and/or taking possession of the property mentioned in said chattel mortgage, or taking any other legal steps as provided by law.

Dated: March 2, 1939.

LEON R. YANKWICH

U. S. District Judge

Approved as to form and copy of the foregoing received this 2 day of March, 1939.

S. L. KURLAND

Attorney for Bankrupt.

[Indorsed]: Filed Mar. 2, 1939. [26]



[Title of District Court and Cause.]

PETITION FOR WRIT OF REVIEW

The petition of Bank of Tehachapi respectfully shows:

I.

That the court has heretofore found that there is due by bankrupt to the Bank of Tehachapi upon promissory notes certain sums of money exceeding \$30,000.00 and that said notes are secured by chattel mortgage covering all bankrupt's cattle, consisting of eight hundred or more head branded with CL on left hip and having earmark of crop and hole in left ear and shoestring in right ear, together with increases thereof, which mortgage was recorded in Book 581, page 455, of Official Records of Kern County, California, and that there is a second mortgage on said cattle from said Bankrupt to J. J. Lopez in the sum of approximately \$12,000.00.

That a transcript of the evidence and proceedings of the first meeting held on November 19, 1938 and proceedings held on January 20, 1939 has been filed with the Conciliation Commissioner and the same was forwarded to the above entitled court upon writs of review heretofore taken by the Bank of Tehachapi and reference is hereby made to the said transcripts.

II.

That at a hearing held before Samuel Taylor, Conciliation Commissioner, on Saturday, March 25, 1939, after evidence had been introduced by and on

behalf of the debtor as to the value of both the real and personal property which had been appraised by Boyce R. Fitzgerald, the appraiser appointed to appraise said property, and testimony was also introduced as to [27] the rental value of the property, the Conciliation Commissioner set aside certain property to bankrupt as exempt and thereupon the Bank of Tehachapi moved to dismiss the proceedings and for a recommendation from the Conciliation Commissioner to the Judge to dismiss the proceedings on the grounds stated in the motion, a true and correct copy of which is attached hereto and marked Exhibit "A", and thereupon the Conciliation Commissioner denied said motion and refused to recommend to the Judge of the above entitled court that the petition of Cummings Ranch, Inc. be dismissed and made his recommendation that the Judge of the above entitled court not dismiss said proceedings and thereupon said Bank of Tehachapi moved for an order that it be authorized to take any and all steps necessary to foreclose its chattel mortgage, said motion being in the form and context attached hereto and marked Exhibit "B"; and thereupon the Conciliation Commissioner denied said motion.

### III.

That said order of said Conciliation Commissioner is in error for the following reasons:

1. That the debtor has not acted in good faith and is not entitled to the benefits of Subsection S of Section 75 of the Bankruptcy Act.

2. That there is no reasonable probability of ultimate debt satisfaction within the three years' period and said order does not give the Bank of Tehachapi its lien pursuant to the terms of said chattel mortgage upon said cattle.

3. That there is no emergency existing as far as the debtor is concerned nor is there any emergency existing in the locality where the debtor's ranch is located.

4. That to allow Cummings Ranch, Inc. to retain possession of the cattle when it is shown by the testimony of Cummings Ranch, Inc. that its financial condition is such that [28] it is hopeless for the debtor to ever settle its debts by any extension, and any proceedings by which the debtor is given any time to pay its debts, is to allow the debtor to appropriate the mortgagee's property for debtor's benefit.

5. That the debtor, from the testimony introduced, cannot refinance itself within a three year period, nor is there any way by which there can be financial rehabilitation of the debtor.

Wherefore, petitioner, feeling aggrieved because of such orders, prays that the same may be reversed as provided in the Bankruptcy Act of 1898 and all amendments thereto and general orders, and that an order be made setting aside and vacating said orders of said Conciliation Commissioner, and that an order be made dismissing debtor's petition and all proceedings in the above case for the reasons mentioned and enumerated in this petition

and/or that an order be made authorizing the Bank of Tehachapi to foreclose its chattel mortgage or take any other legal steps provided in said chattel mortgage to enforce payment of its indebtedness secured by said chattel mortgage.

HARVEY, JOHNSTON & BAKER  
By C. W. JOHNSTON

Attorneys for Petitioner [29]

## POINTS AND AUTHORITIES

### I.

The court should dismiss proceedings where it is evident that rehabilitation of a farm debtor is not possible.

Wright vs. Mountain Trust Bank, 81 Law Ed. 738, 300 U. S. 440.

### II.

Cannot appropriate mortgagee's property for debtor's benefit.

Louisville Bank vs. Radford, 295 U. S. 555, 79 Law Ed. 1595.

### III.

Debtors must act in good faith.

See Wright vs. Mountain Trust Bank, *supra*, and Guarantee Mortgage Company vs. Moser, 95 Fed. (2) 944 (9th). [30]

## EXHIBIT "A"

[Title of District Court and Cause.]

## MOTION TO DISMISS

Comes now the Bank of Tehachapi and moves the above entitled court to dismiss the petition of the above debtor for the following reasons, to-wit:

1. That there is no emergency existing as far as Cummings Ranch, Inc. is concerned.

2. That the Cummings Ranch, from the testimony in the record, shows that it will be impossible for it to refinance itself within three years and that there is no reasonable probability of ultimate debt satisfaction within the Moratorium period allowed by law.

3. That any extension given to the debtor would not give to the Bank of Tehachapi a right to retain its lien unencumbered and that the same would be and is unconstitutional in that it would permit the alleged farmer, to-wit, the Cummings Ranch, Inc. to remain in possession of cattle which are under chattel mortgage given as security to pay the debt to the Bank of Tehachapi, where it is shown by the record that the Cummings Ranch, Inc. is in such a hopeless financial condition that any extension of time would be to allow the debtor to appropriate the mortgagee's property for the debtor's benefit.

4. That there is no emergency existing in this locality and the locality where the debtor's ranch is located.

That the Conciliation Commissioner make his recommendation in writing to the Judge of the above entitled court to dis- [31] miss said petition of said Cummings Ranch, Inc. the debtor, upon the grounds and for the reasons stated in this motion.

Dated March 24, 1939.

HARVEY, JOHNSTON & BAKER

By C. W. JOHNSTON

Attorneys for Bank of Tehachapi

## EXHIBIT "B"

[Title of District Court and Cause.]

MOTION FOR ORDER AUTHORIZING  
BANK TO FORECLOSE

Comes now the Bank of Tehachapi and moves the above entitled court for an order authorizing said bank to take any and all steps that it may desire to foreclose its chattel mortgage and/or to sell said property mentioned in said chattel mortgage as provided by said chattel mortgage and/or to take any other legal steps as provided by law so that said property mentioned in said chattel mortgage may be sold and the proceeds thereof applied upon the debts due by said debtor to said bank as mentioned in said chattel mortgage for the reason that if said debtor is allowed to retain possession of said mortgaged property, that substantial loss in value will be sustained by said bank upon its security and for the further reason that said debtor is not acting in good faith, and for the further reason that the testimony shows that it is impossible for the bankrupt to refinance itself within three years and that the bankrupt is so hopelessly involved in indebtedness that it is impossible for it to rehabilitate itself.

Dated: March 24, 1939.

HARVEY, JOHNSTON &amp; BAKER

By C. W. JOHNSTON

Attorneys for Bank of Tehachapi



United States of America,  
Southern District of California,  
Northern Division,  
County of Kern—ss.

C. W. Johnston being duly sworn, says: That he is one of the attorneys for the petitioner in the foregoing entitled matter and he makes this affidavit and verification for and on behalf of the Bank of Tehachapi for the reason that the facts are within his knowledge and not within the knowledge of any of the officers and agents of said Bank of Tehachapi as to some of the matters set forth in said petition for writ of review; that he has read the foregoing petition for writ of review and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief and as to those matters, that he believes it to be true.

C. W. JOHNSTON

Subscribed and sworn to before me this 4th day of April, 1939.

[Seal]                      KATHERINE STAUSS

Notary Public in and for the County of Kern,  
State of California.

[Indorsed]: Filed May 9, 1939. [34]

[Title of District Court and Cause.]

PETITION FOR WRIT OF REVIEW

The petition of Bank of Tehachapi respectfully shows:

I.

That the court has heretofore found that there is due by bankrupt to the Bank of Tehachapi upon promissory notes certain sums of money exceeding \$30,000.00 and that said notes are secured by chattel mortgage covering all bankrupt's cattle, consisting of eight hundred or more head branded with CL on left hip and having earmark of crop and hole in left ear and shoestring in right ear, together with increases thereof, which mortgage was recorded in Book 581, page 455, of Official Records of Kern County, California, and that there is a second mortgage on said cattle from said Bankrupt to J. J. Lopez in the sum of approximately \$12,000.00.

That a transcript of the evidence and proceedings of the first meeting held on November 19, 1938 and proceedings held on January 20, 1939 has been filed with the Conciliation Commissioner and the same was forwarded to the above entitled court upon writs of review heretofore taken by the Bank of Tehachapi and reference is hereby made to the said transcripts.

II.

That the orders of the Conciliation Commissioner heretofore made as to rental value, upon which the



Bank of Tehachapi took a writ of review, were reversed pursuant to order of Judge Leon R. Yankwich dated March 2, 1939 and ordered the Conciliation Commissioner to take additional evidence as to what is the [35] reasonable rental value of the property to be retained by the bankrupt in the custody and under the supervision and control of the court and to make an order fixing the rental value; and thereafter, on the 5th day of April, 1939, the Conciliation Commissioner made his order, a copy of which is attached hereto and marked Exhibit "A", and that a portion of said order fixing rental value is as follows, to-wit:

"That the reasonable rental value of the property of debtor in the sum of \$6000.00 shall be paid as follows, to-wit: \$10,000. to be paid on or before May 15, 1939 under order of Court in lieu of rental for the year of 1939; One half of said annual rental, or the sum of \$3,000. to be paid on April 1, 1940 and the other half or \$3000. to be paid on October 1, 1940, and a like amount April 1 & Oct. 1 each year thereafter."

That said order of Judge Leon R. Yankwich of March 2, 1939 further provided that,

"in order to protect the Bank of Tehachapi from loss under its chattel mortgage and in order to conserve the security, it is necessary that a sufficient amount of cattle be sold to net \$10,000.00 to be paid to the Bank of Tehachapi

within a reasonable time, which is on or before May 15, 1939.”

and said order further provided,

“5. That the bankrupt shall request the Conciliation Commissioner to cause to be sold at public auction a sufficient number of cattle to bring at least \$10,000.00, which amount must be paid net to the Bank of Tehachapi at the time of the sale, but not later in any event than May 15, 1939, provided, however, that any cattle may be sold at private sale at any time upon request of debtor and the two mortgagees, or upon five days’ notice to the mortgagees and then upon order of Court.”

### III.

That said order of said Conciliation Commissioner is in error for the following reasons:

1. That the debtor has not acted in good faith and is not entitled to the benefits of Subsection S of Section 75 of the Bankruptcy Act.

2. That there is no reasonable probability of ultimate debt satisfaction within the three years’ period and said order [36] does not give the Bank of Tehachapi its lien pursuant to the terms of said chattel mortgage upon said cattle.

3. That there is no emergency existing as far as the debtor is concerned nor is there any emergency existing in the locality where the debtor’s ranch is located.

4. That to allow Cummings Ranch, Inc. to retain possession of the cattle when it is shown by the testimony of Cummings Ranch, Inc. that its financial condition is such that it is hopeless for the debtor to ever settle its debts by any extension, and any proceedings by which the debtor is given any time to pay its debts, is to allow the debtor to appropriate the mortgagee's property for debtor's benefit.

5. That the debtor, from the testimony introduced, cannot refinance itself within a three year period, nor is there any way by which there can be financial rehabilitation of the debtor.

6. That the order of said Conciliation Commissioner fixing rental is in violation and contrary to the order of Judge Leon R. Yankwich of March 2, 1939.

7. That said order is contrary to the provisions of subsection 2 of Section S of the Frazier-Lemke Act.

8. That said order of said Conciliation Commissioner fixing rental is void and invalid as it deprives the Bank of Tehachapi of a portion of its lien upon property for the benefit of other creditors.

Wherefore, petitioner, feeling aggrieved because of such orders, prays that the same may be reversed as provided in the Bankruptcy Act of 1898 and all amendments thereto and general orders, and that an order be made setting aside and vacating said orders

of said Conciliation Commissioner, and that an order be made dismissing debtor's petition and all proceedings in the [37] above case for the reasons mentioned and enumerated in this petition; and for such other and further relief as may be proper and just in the premises.

BANK OF TEHACHAPI,  
a corporation  
By ALBERT ANCKER  
Petitioner.

HARVEY, JOHNSTON & BAKER  
By C. W. JOHNSTON  
Attorneys for Petitioner. [38]

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EXHIBIT "A"

[Title of District Court and Cause.]

ORDER OF CONCILIATION COMMISSIONER  
APPROVING APPRAISAL AND FIXING  
RENTAL

The matter of fixing the rental value and approving the report of the appraiser of the property of the debtor herein, in accordance with the ruling of the Hon. Leon R. Yankwich, a judge of the above named Court, the matter having on the 2nd day of March, 1939, come up for hearing before him, and now coming on for hearing before the Hon. Samuel Taylor, Conciliation Commissioner, at a meeting called for above named purpose for the creditors of

said debtor held March 18 and 25, 1939 at 10 o'clock A. M. of said days at Bakersfield, California, and William S. Marks, attorney for debtor herein, appearing, and C. W. Johnston of Harvey, Johnston & Baker, appearing as attorney for the Bank of Tehachapi and Mrs. Chas. Asher; and Guy Greanleaf appearing for the Federal Land Bank of Berkeley and evidence on the matter having been heard and the report of the appraiser being filed, said Conciliation Commissioner being fully advised in the premises, it is hereby Ordered, Adjudged, and Decreed as follows:

1. That the report of Boyce R. Fitzgerald, appraiser, heretofore appointed to appraise the property of the debtor herein and who under said order re-appraised the following described property to-wit:

5009 acre farm and stock ranch situate in Sections 31, T. 32 S., R. 32 E., M. D. B. & M.; and in Sections 3, 4, 5, 8, 9, 10, 14 and 16 in T. 11 N., R. 16 W., S. B. B. & M., all in Kern County, California;

at Forty thousand one hundred dollars (\$40,100.00) be approved. [39]

2. That the report of said appraiser re-appraising the personal property as follows, to-wit:

82 three year old steers, 950 lbs. @ 6½¢ .....	\$ 5022.50
56 two year old steers, 800 lbs. @ 7¢	3136.00
92 one-year old steers, 650 lbs. @ 6½¢ .....	3887.00
260 cows, 1000 lbs. @ 4¢.....	10400.00
48 two year old heifers, 800 lbs. @ 4½¢ .....	1728.00
86 one year old heifers, 600 lbs. @ 5¢ .....	2850.00
25 bulls, 1250 lbs. @ 4¢.....	1000.00
50 calves, 225 lbs. @ 10¢.....	1125.00
20 calves, 150 lbs. @ 10¢.....	300.00
40 calves, @ \$10.00 per head.....	400.00
Miscellaneous household goods and furniture .....	100.00
15 horses @ \$50.00 per head.....	750.00
500 chickens @ \$1.00 per head.....	500.00
1 Ford Car @ \$50.00.....	50.00
1 Harvester .....	100.00
2 Mowers @ \$10.00 .....	20.00
1 hay rake .....	10.00
1 Tractor .....	200.00
3 saddles @ \$10.00 each .....	30.00
1 radio .....	20.00

That the total appraised value of said personal property is \$31,358.50, and that the same be approved;

3. That all of the property of the debtor be set aside to said debtor for its use and occupancy for



a period of three years, subject however, to the supervision and control of the Court.

4. That said debtor has no property exempt by state law. [40]

5. That the reasonable rental value of the property of debtor is as follows, to-wit:

(1)	4409 acres of grazing land @	
	.25 per acre .....	\$1102.25
(2)	400 acres of grain land @ \$1.50	600.00
(3)	200 acres of irrigable land @	
	\$2.50 .....	500.00

making a total rental value of land of debtor in the sum of \$2202.25.

(4)	230 head steers @ \$2.50.....	575.00
(5)	260 head cows @ \$2.50.....	650.00
(6)	134 head heifers @ \$2.50 .....	336.00
(7)	25 bulls @ \$12.50 .....	312.50
(8)	110 calves @ \$3.00 .....	330.00
(9)	15 horses @ \$12.50 .....	180.00
(10)	500 chickens @ .25 .....	125.00
(11)	Tractor and farm implements..	105.25

making a total rental value of personal property above named at \$2613.75.

(12) That the rental value of Railroad Land now being used but not owned by debtor is \$675.00; that the rental value of the camp and well on said premises is \$125.00; and that the rental value of the McWilliams property rented but not owned by debtor is \$384.00 making a total of \$1184.00 rental for this land not owned.

That the reasonable rental value of the property of debtor in the sum of \$6000.00 shall be paid as follows, to-wit: \$10,000.00 to be paid on or before May 15, 1939 under order of Court in lieu of rental for the year of 1939; One half of said annual rental, or the sum of \$3,000.00 to be paid on April 1, 1940 and the other half or \$3000.00 to be paid on October 1, 1940, and a like amount April 1 and October 1 each year thereafter;

That the said monies shall be paid to the Conciliation Commissioner and shall be distributed by him as follows: [41]

(1) To the payment of State and County taxes, improvement liens, assessments, and expenses of administration;

(2) The balance is to be paid to the creditors of said debtor as their priorities and interests may appear.

That all judicial actions and proceedings in any Court or under the direction of any official against said debtor or any of its property be stayed for a period of three years and that during such period of three years the debtor shall be permitted to retain possession of all or any part of said property in the custody and under the control and supervision of the Court.

Dated: April 5, 1939.

SAMUEL TAYLOR

Conciliation Commissioner

[42]



POINTS AND AUTHORITIES

I.

The court should dismiss proceedings where it is evident that rehabilitation of a farm debtor is not possible.

Wright vs. Mountain Trust Bank, 81 Law Ed. 738, 300 U. S. 440.

II.

Cannot appropriate mortgagee's property for debtor's benefit.

Louisville Bank vs. Radford, 295 U. S. 555, 79 Law Ed. 1595.

III.

Debtors must act in good faith.

See Wright vs. Mountain Trust Bank, *supra*, and Guarantee Mortgage Company vs. Moser, 95 Fed. (2) 944 (9th).

IV.

The mortgagee has a right to retain its lien until the indebtedness thereby secured is paid.

See Wright vs. Mountain Trust Bank, *supra*. [43]

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United States of America,  
Southern District of California,  
Northern Division,  
County of Kern—ss.

Albert Ancker being duly sworn, says: That he is President of Bank of Tehachapi, a corporation,

the petitioner named in the foregoing entitled matter; that he has read the foregoing petition for writ of review and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief and as to those matters, that he believes it to be true.

ALBERT ANCKER

Subscribed and sworn to before me this 19th day of April, 1939.

[Seal] T. W. PLANT

Notary Public in and for the County of Kern,  
State of California.

My Commission expires Oct. 25, 1942.

[Indorsed]: Filed May 9, 1939. [44]

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[Title of District Court and Cause.]

CERTIFICATE OF CONCILIATION  
COMMISSIONER  
(REVIEW)

The undersigned conciliation commissioner hereby certifies as follows:

This matter has been heard upon review of my former rulings by the Honorable Leon R. Yankwich one of the Judges of this Court and due to the fact that my previous orders were set aside and new orders made by Judge Yankwich, this creditor again petitioned this court for an order dismissing these

proceedings which order was denied. My former orders denying this creditor's several motions for dismissal or permission to foreclose its chattel mortgage although set aside by Judge Yankwich were in reality sustained for the reason Judge Yankwich did not grant creditor's request for dismissal or permission to foreclose.

The creditor's present petitions to review embrace the selfsame questions previously passed upon by Judge Yankwich and are made because your commissioner's previous rulings were set aside, therefore allowing this creditor to renew his former motions and after denial reviewing the orders. The questions here involved have been passed upon by Judge Yankwich and both petitions contain the identical grounds and prayers for relief heretofore denied by Judge Yankwich upon the former hearing.

Respectfully submitted,

SAMUEL TAYLOR

Conciliation Commissioner

Bakersfield, Cal. May 6, 1939.

[Indorsed]: Filed May 9, 1939. [45]

In the District Court of the United States, for the  
Southern District of California, Northern  
Division

No. 4927

In the Matter of

CUMMINGS RANCH, INC.,  
a corporation,

Bankrupt.

ORDER DENYING WRITS OF REVIEW OF  
BANK OF TECHACHAPI AND DENYING  
MOTION AND PETITION TO FORE-  
CLOSE CHATTEL MORTGAGE AND AP-  
PROVING ORDER OF CONCILIATION  
COMMISSIONER

The petition for writs of review of Bank of Tehachapi for an order to vacate and set aside the order of the Conciliation Commissioner denying Bank of Tehachapi's motion for an order allowing the Bank to take all and any necessary steps that it might desire to foreclose its chattel mortgage or any other steps authorized by law to enforce settlement of the notes secured by the said chattel mortgage, and to set aside an order of the Conciliation Commissioner refusing to make a recommendation to the Judge, in writing, that the petition of Cummings Ranch, Inc. be dismissed, and the recommendation of the Conciliation Commissioner to the Judge that it not be dismissed; and for an order dismissing said petition of Bankrupt, and for an

order vacating and setting aside the order of the Conciliation Commissioner approving appraisal and fixing rental, said petitions for review being upon the Bank of Tehachapi petitions dated April 4, 1939 and April 19, 1939, came on regularly for hearing before the above entitled Court on Monday, September 11, 1939, before the Honorable Leon R. Yankwich, C. W. Johnston appearing as attorney for the Petitioner, and S. L. Kurland appearing as attorney for Bankrupt, and after hearing upon said petitions and argument by counsel, the same was submitted to the Court for its consideration and decision, and from the records and files in the above proceeding and from the evidence introduced before the Conciliation Commissioner, transcripts of which evidence were heretofore forwarded with writs of review, the Court finds: [47]

### I.

That the order of the above entitled Court of March 2nd, 1939 requiring the Conciliation Commissioner in the above entitled cause to cause a re-appraisal to be had of the property of the Bankrupt and to take additional evidence of the reasonable rental value of the said property and to make an order fixing the rental value and to hear evidence as to the matter of a supervisor for the care of the cattle and to cause sufficient cattle to be sold to bring in at least \$10,000.00 to be paid to the creditor Bank of Tehachapi has been complied with, and the findings and orders of the Commissioner as to each

of the foregoing is hereby approved except as specifically modified hereinafter.

## II.

That the sum of \$10,404.00 was obtained by the sale of said cattle and all of said sum was paid over by said Commissioner to the Bank of Tehachapi and is to apply on the principal of that certain promissory note of the Bankrupt to the said Bank which said note is secured by chattel mortgage on the cattle of the bankrupt corporation.

## III.

That the sum of \$6,000.00 is the reasonable rental value for the property of the debtor company as it existed prior to the sale of the said cattle.

## IV.

That the petitions and each of them for a writ of review and for an order to vacate and set aside the order of the Conciliation Commissioner denying the Bank of Tehachapi permission to foreclose on its said chattel mortgage are each denied, and the Bank of Tehachapi is not entitled to an order of dismissal of the above entitled proceeding or an order to foreclose its chattel mortgage. [48]

Now Therefore, It Is Ordered, Adjudged and Decreed as Follows:

(1) That the Order of the Conciliation Commissioner approving the appraisal and fixing the rental is confirmed and approved, excepting only that the sum of \$10,404.00 heretofore paid by the

Bankrupt Corporation to the Bank of Tehachapi pursuant to the order of the above entitled Court of March 2nd, 1939 shall be applied upon the principal of the Bank's promissory note which is secured by a chattel mortgage on the cattle of the bankrupt.

(2) That the writs of review of the Bank of Tehachapi of April 4th, 1939 and April 9th, 1939 are hereby denied, and the petition and motion to foreclose on the chattel mortgage is hereby denied; exception allowed.

Dated: October 23rd, 1939.

LEON R. YANKWICH

United States District Judge

Approved as to form and copy of the foregoing received this ..... day of October, 1939.

.....  
Attorney for Bankrupt.

[Indorsed]: Filed Oct. 23, 1939. [49]

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[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that Bank of Tehachapi, a corporation, a creditor of the above named bankrupt, hereby appeals to the Circuit Court of Appeals, for the Ninth Circuit, from the order denying the writs of review of April 4, 1939 and April 19, 1939, of the Bank of Tehachapi; denying the petition and motion of said Bank of Tehachapi for an order authorizing it to foreclose on its chattel



mortgage; approving the order of the Conciliation Commissioner approving appraisal and fixing rental, and denying the petition and motion of said Bank of Tehachapi to dismiss the bankruptcy petition of the above named bankrupt, which order was entered in the above bankruptcy case on the 23rd day of October, 1939.

HARVEY, JOHNSTON &  
BAKER

T. N. HARVEY

J.

C. W. JOHNSTON

C. F. BAKER

J.

Attorneys for Appellant Bank  
of Tehachapi.

Address: 359 Habermelde  
Building, Bakersfield,  
California.

Received copy of notice of appeal 12/6/39.

WM. S. MARKS

S. L. KURLAND

Attorneys for Debtor.

[Indorsed]: Filed Nov. 24, 1939. [50]

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[Title of District Court and Cause.]

CLERK'S CERTIFICATE

I, R. S. Zimmerman, Clerk of the District Court of the United States for the Southern District of California, do hereby certify the foregoing pages,



numbered from 1 to 59, inclusive, contain full, true and correct copies of Petition for Review of order dated Dec. 2, 1938; Petition for Review of order dated Jan. 20, 1939; Petition for Review of order dated Feb. 2, 1939; Order of Conciliation Commissioner fixing rental; Order Reversing Conciliation Commissioner's Order; Petition for Review of order dated Mar. 25, 1939; Petition for Review of order dated April 5, 1939; Certificate of Conciliation Commissioner; Minute Order Sept. 11, 1939; Order denying petitions for review; Notice of Appeal; Appellant's Designation of contents of record on appeal; Appellee's Designation of contents of record on appeal, and Bond on Appeal, which together with Reporter's Transcripts of Testimony of Nov. 19, 1938 and Jan. 20, 1939, transmitted herewith, constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I Do Further Certify that the fees of the Clerk for comparing, correcting and certifying the foregoing record amount to \$17.75, and that said amount has been paid me by the Appellant herein.

Witness my hand and the Seal of the District Court of the United States for the Southern District of California, this 27th day of December, A. D. 1939.

[Seal]

R. S. ZIMMERMAN,

Clerk.

By EDMUND L. SMITH,

Deputy Clerk. [60]

[Title of District Court and Cause.]

REPORTER'S TRANSCRIPT OF TESTIMONY  
AND PROCEEDINGS

Bakersfield, California, November 19, 1938

This case coming on regularly at this time, for hearing, before Samuel Taylor, Esq., Conciliator, the following proceedings were had, to-wit:

The Court: In the matter of Cummings Ranch, Inc., No. 4927. Are you ready gentlemen?

Mr. Johnston: Ready for the Bank of Tehachapi.

Mr. Marks: Ready for the Petitioner.

EDWARD G. CUMMINGS

being first duly sworn testified as follows:

Mr. Johnston: What is your name?

A. Edward G. Cummings.

Q. And what connection, if any, do you have with Cummings Ranch Inc.?

A. Well I am the president of the company.

Q. How long have you been president of the company?

A. Ever since we have incorporated. I don't know just exactly how many years.

Q. Approximately how long were you incorporated? A. Ten or fifteen years or so.

Q. Are there any other officers in the corporation besides yourself?

A. Yes, my brother is secretary.

Q. And your brother, what is his name?

A. Albert.

(Testimony of Edward G. Cummings.)

Q. Are there any other officers?

A. Clarence Cummings is vice president.

Q. Any other officers?

A. Not that I know of [61]

Q. And who are the directors?

A. Well I don't remember just exactly.

Q. Have you got your books with you?

A. No, I have not.

Q. Have you got them, Mr. Marks?

Mr. Marks: No.

Mr. Johnston: We issued a request to have you bring them here this morning.

The Court: We asked them to bring them, yes. What is the purpose of the books?

Mr. Johnston: I have a right to inspect the books to find out who the stockholders and the officers are.

Mr. Marks: There is no objection, I didn't know you needed them. He asked me the day before yesterday if he should bring them and I said I didn't know that the books would be necessary. If they are not here it may be my fault. He ought to know who the directors are anyway, without the books.

A. (By the witness) Well of course I would not say right off hand, of course.

Mr. Johnston: Q. Let us go on now, and we can continue this matter and he can come down and bring the books again.

(Testimony of Edward G. Cummings.)

Q. Now does the corporation own any real property?      A. Property?

Q. Real property?

A. The Cummings Ranch.

Q. And what does that consist of?

A. Farming and mountain land. [62]

Q. About five thousand acres?

A. Five thousand and nine to be exact.

Q. Are there any taxes due against that real property?      A. Yes, there is some taxes.

Q. About how much?

A. Well there is delinquent taxes about two hundred and twenty five dollars, and then through Mr. Greenleaf's office they took up the other taxes, the taxes of last year, they paid them, and the second payment has not been made.

Q. You say the taxes for the fiscal year 1937-38 have been paid?

A. It is on the record there.

Q. But you never paid it—your company never paid it?

A. No—there is Two Hundred and Twenty-Five Dollars delinquent.

Q. Are there any other delinquent taxes besides those?      A. Not that I know of.

Q. Have you paid any corporation franchise tax within the last few years?

A. We are all paid up on that, yes sir.

Mr. Johnston: (To Mr. Greenleaf) You represent the Federal Land Bank do you?

(Testimony of Edward G. Cummings.)

Mr. Greenleaf: I represent the Federal Bank, and the Federal Land Bank Commissioner, and it is all included in this one claim.

Mr. Johnston: Q. Mr. Cummings, I will show you a claim that has been filed by the Federal Land Bank, [63] particularly that shows an indebtedness of Twenty One Thousand Four Hundred and Sixteen Dollars and Forty-Five Cents, and also another claim of Federal Mortgage Corporation for Four Thousand Nine Hundred and Ninety Seven Dollars and Fifty-Eight Cents, and I will ask you if those amounts are approximately correct?

A. Well I couldn't say. Naturally I supposed they would be, sure. I have not checked that over, but I suppose they are all right.

Q. You have listed in your schedules that you swore to, that you owe the two banks Twenty Five Thousand Five Hundred Dollars?

A. Something like that.

Q. Is that approximately correct?

A. Yes, without the interest.

Q. Yes.

A. Something like that—I don't know.

The Court: You would not expect him to calculate the interest.

Mr. Johnston: I asked him if they were approximately correct?

A. Yes. In other words we have the commissioner's loan and the regular Loan Bank loan.

(Testimony of Edward G. Cummings.)

Q. You have stated that you owe J. J. Lopez Eleven Thousand Dollars?

A. Probably a little more, probably around Twelve Thousand with interest.

Q. Is that Mr. Lopez any relation of yours?

A. Well he is really a second cousin. I call him Uncle—strictly speaking he is a second cousin.

Q. And when did you borrow the money from Mr. Lopez?

A. Well [64] I don't know exactly, a good many years ago I borrowed some when I had to have some money to carry on, and he let me have the money. Of course I have not paid him any interest, and he never insisted on any, and was waiting until I got straightened out, and if I had any money I would give it to him.

Q. You gave him a note when you borrowed the money did you?      A. Yes sir.

Q. That is the Cummings Ranch, Inc.?

A. Yes.

Q. And a Chattel Mortgage?      A. Yes.

Q. On some cattle?      A. Yes.

Q. And that was the Chattel Mortgage that was second to the Chattel Mortgage of the Bank of Tehachapi?      A. Yes.

Q. Was that a new loan at the time you executed that note to Lopez?      A. A new loan?

Q. Yes?

A. No, it was simply the money I had owed him with the interest added to it.



(Testimony of Edward G. Cummings.)

Q. It was an old loan?

A. I imagine so.

Q. Then approximately when did you start to borrow the money from Mr. Lopez, what year?

A. I don't know. It is quite a good many years ago.

Q. About when?

A. I don't know, ten years or so, more or less.

Q. Did you keep a record of it?

A. Well I kept a record more or less. I renewed the note whenever it was due, and [65] gave him another note.

Q. So it was at least ten years ago that you started it?

A. I imagine, something like that.

Q. Now when you borrowed the money from the Federal Land Bank, this Twenty Five Thousand Five Hundred Dollars, what did you do with the money you got from the Federal Land Bank?

A. I paid off the old note to Mrs. Kelly.

Q. And how much was her note?

A. A great deal more than that, I don't remember, but she was going to take that as payment for the amount we owed her.

Q. And when did you first borrow money from Mrs. Kelly?

A. Probably eight or ten years before that, and the interest——

Q. This ranch formerly belonged to your father didn't it?



(Testimony of Edward G. Cummings.)

A. Not all of it. I added to it after I came back to the ranch. I added probably half the acreage.

Q. And when did you start in the operation of the ranch up there?      A. In June 1895.

Q. Did you have anybody associated with you at that time in the operation of the ranch?

A. Well, it was a family affair. Before we incorporated it we worked together.

Q. How many people were interested in it then?

A. Well at that time, before my mother and father died, they were in there, and six children, of course.

Q. Who were the children interested in it?

A. Frank, Albert, Edward, George, Clarence and Grace. [66]

Q. And are they still interested in it?

A. No, Miss Snyder, who was Grace's sister, isn't interested in it.

Q. How many are interested in it now?

A. Six.

Q. And do you each have the same interest in there?      A. No.

Q. Do you have with you any record of what each has as an interest in there?

A. Yes, approximately. I originally had eleven thousand four hundred and ninety shares, and then I got thirty five hundred shares more, and that is owned with Clarence and Albert and George Cummings.

Q. Do you know how many shares you issued?

(Testimony of Edward G. Cummings.)

A. Sixty Thousand shares all together.

Q. Do your books portray what each stockholder has?      A. Yes, absolutely.

Q. Now do you recall how many shares you have?

A. Eleven thousand four hundred and ninety, and thirty five hundred.

Q. Have you acquired any shares since this petition has been filed?      A. No.

Q. Have you acquired any shares during the year 1938?      A. No—1938, yes.

Q. When did you acquire those shares?

A. Previous to the time this was filed.

Q. How long previous to the time?

A. I don't remember just how long.

Q. Well was it a few days?      A. Yes.

Q. And how much did you pay for those shares you acquired? [67]

A. One Dollar per share.

Q. And what was the purpose of your acquiring those shares?

A. Because they belonged to me for my work.

Q. How do you mean they belonged to you for your work?

A. I got them from my brother Frank who never helped any in this particular case, and he had borrowed some money previous to that, and he wanted to turn them over to me.

Q. And that was a few days before you filed this petition?      A. Yes.

(Testimony of Edward G. Cummings.)

Q. What does your brother Frank do?

A. He is chief clerk of the District Attorney's office.

Q. Where? A. Los Angeles.

Q. And you paid him One Dollar a share for how many shares?

A. Thirty Six hundred, right at the transaction he owed me some money, that is the only way I got paid was by the stockholders turning over their shares, who were not interested.

Q. During the year 1938 did you receive any other shares? A. No.

Q. Was there an exchange of any shares of stock by anyone upon your books during 1938 except what you have told us about? A. No.

Q. All right now, before you got this Thirty Six Hundred shares how many shares did you have?

A. I have eleven thousand four hundred and ninety, I believe to be exact.

Q. And how many did Frank have?

A. Frank had—I don't [68] remember exactly now. I don't know whether I have a record of it here or not. I never brought the books down, but I was not instructed—well that can easily be gotten from the books. It was eleven thousand four hundred and ninety all three of us had, and then the rest of the sixty thousand was divided between the other three.

Q. Frank had eleven thousand four hundred and ninety?

(Testimony of Edward G. Cummings.)

A. No, Albert, Clarence, and Edward.

Q. And the other three had the remaining, divided among them?

A. Yes, divided equally, and I received thirty six hundred from Frank.

Q. Now I didn't get the names of the other people—you think Frank owed some—you say he worked in the district attorney's office in Los Angeles?

A. Yes.

Q. And who were the other two besides yourself, Albert and Frank and Clarence?

A. Well there is Edward J., that is my son, and George Cummings.

Q. And where does Edward J. live?

A. He is in Santa Barbara.

Q. What does he do?

A. He is with the government.

Q. United States government? A. Yes.

Q. In what capacity?

A. Well I don't know, a Federal proposition of some kind I think, W. P. A. I believe.

Q. And where does George Cummings live?

A. He is practically retired, and works on the ranch, and he is on a pension. [69]

Q. He lives up on the ranch?

A. He goes back and forth from the ranch. He is pensioned, and he has a home in Los Angeles.

Q. Pensioned by whom?

A. He was a police officer.

(Testimony of Edward G. Cummings.)

Q. He was a police officer in Los Angeles and he lives in Los Angeles?

A. Well, not all the time. He divides his time between the ranch, and when he has finished with his work he goes back to Los Angeles.

Q. And what is his address in Los Angeles?

A. 1684 West Jefferson Boulevard.

Q. Now this Dollar that you paid to Frank, did you pay that by check?

A. No, I don't believe I did.

Q. Was that transfer of that stock made after the Sheriff had taken possession of your cattle up there?      A. No sir, before.

Q. How many days before that?

A. I don't know, maybe a week or two, I don't know.

Q. Did you make a trip to Los Angeles to get it?

A. Yes, I went to Los Angeles and got it.

Q. Do you remember when you went down there?      A. No I don't remember.

Q. Did anybody go with you?

A. No, nobody but me—nobody traveled with me.

Q. And he endorsed over—he only had it in one certificate did he?

A. That is the thirty six hundred shares? [70]

Q. Did he have separate certificates?

A. I suppose he had.

Q. Don't you know what you got?

A. I suppose so. If I had my books I could tell

(Testimony of Edward G. Cummings.)

you, but I don't remember the hundred and one questions you ask me.

Q. When you went down there, where did you meet your brother?           A. In his office.

Q. At the district attorney's office?

A. Yes.

Q. And what did you say to him?

A. What did I say to him?

Q. Yes?

A. I told him I wanted him to pay me what he owed me. He said he couldn't do it, and I said I don't want you to be completely out.

Q. Did you tell him how much he owed you?

A. Yes, he owed me more money than that, but that is all he turned over to me. That is the way I wanted to do it two or three years ago. I just wanted to have it done was all.

Q. And then he endorsed a certificate for thirty six hundred shares?           A. Yes.

Q. In one certificate was it?

A. Yes, I suppose so.

Q. Well don't you know?

A. Yes—as near as I remember, yes.

Q. When you started to operate the ranch up there, you and your brothers, was there any mortgage on the real property up there at that time?

A. No. We owed for some railroad land that was bought.

Q. How much approximately did you owe at that time?



(Testimony of Edward G. Cummings.)

A. That [71] is a long time ago, and I paid it up as I went along.

Q. That wasn't very much?

A. What land we had to start with except one or two homesteads, we bought from the railroad.

Q. When did you start borrowing money from the Bank of Tehachapi?

A. Well I don't know. I didn't have to borrow any for a good many years, after I went there. I ran the ranch without borrowing any money, and I had some property in Los Angeles. We had a good deal of property, and we mortgaged the ranch to save some of that—that is the way it started, in order to save the Los Angeles property we mortgaged the ranch, or gave it as security, which naturally went to mortgage.

Q. And what became of the Los Angeles property?

A. It just went like all the rest of it. We didn't save any of it, and then of course it reverted back, and they held the ranch responsible, which then, we had to do the best we could.

Q. And that was before you incorporated was it?

A. Yes.

Q. And at the time you incorporated do you know how much you owed on the ranch—that is I mean on the real property borrowed from somebody where you gave the real property as security, gave a trust deed or mortgage on the real property?

A. I can't remember those things. These trans-



(Testimony of Edward G. Cummings.)

actions were back and forth there.

Q. Did you keep any record of them?

A. Before we incorporated?

Q. At the time you incorporated?

A. I suppose there is a [72] record, I don't know.

Q. Well, I will show you here, Mr. Cummings, a statement of the financial condition of your ranch that you furnished to the Bank of Tehachapi the first part of the year 1923, and I will ask you if that is a correct statement or not?

A. I imagine so.

Mr. Johnston: I want to introduce that in evidence as Bank of Tehachapi's Exhibit 1.

The Court: Let it be introduced.

BANK OF TEHACHAPI'S EXHIBIT 1

reads as follows:

STATEMENT CUMMINGS RANCH, INC.  
Jan. 1, 1923

ASSETS

4000 acres (estimated) range, springs, Cummings creek etc. @ \$10.00 per acre.....	\$40,000
500 acres (estimated) slope for fruit etc.....	12,500
500 acres (estimated) bottom lands, alfalfa, grain, reservoirs etc. @ \$50.00.....	25,000
17 miles fence and hog fences, etc.	
18 million feet Pine Saw timber, cruised at this amount, \$5.00 per M.....	90,000
10 million feet Live Oak saw timber, \$7.00.....	70,000
50,000 cords oak cord wood, @ \$1.00 cd.....	50,000
800 head cattle, more or less.....	32,000
150 head cows 3 to 8 yrs.	

## (Testimony of Edward G. Cummings.)

75 steers, 2 & 3 yrs.  
 100 head yearling steers  
 150 weanling calves  
 100 suckling calves  
 33 bulls

Actual amount will over run these estimates.

50 head horses.....	3,750
200 hogs .....	2,500
Implements, equipments, etc.....	3,500
	<hr/>
	329,250

## LIABILITIES

Real Estate Mtg. long time to run.....	\$25,000	
“ “ “ Mrs. Cummings.....	1,000	
Chattel mortgage on stock.....	15,000	
Open notes .....	4,250	
	<hr/>	
		45,250
		<hr/>
		\$284,000

Stock all issued and held as follows:

Edw. G. Cummings, President.....	11,500	shares
Albert N. Cummings, Treasurer.....	11,500	“
Clarence G. Cummings, Vice-Pres.....	11,500	“
Geo. A. Cummings.....	8,500	“
Frank R. Cummings.....	8,500	“
Grace Snyder, Secretary.....	8,500	“
	<hr/>	
Total Capital Stock.....	60,000	“

Signed. EDW. G. CUMMINGS, Pres.”

[74]

Q. I will hand you that and ask you to look at the bottom, and tell me whether that is your brother Albert's signature?      A. Yes.

(Testimony of Edward G. Cummings.)

Q. Now look at that statement that you furnished the bank, that is the Cummings Ranch did, and tell me if that statement is approximately correct?

A. Well it sounds like it is all right.

Mr. Johnston: I want to introduce that as Cummings Ranch Exhibit No. 2.

The Court: Let it be introduced.

### BANK OF TEHACHAPI EXHIBIT 2

reads as follows:

“Tehachapi  
Kern Co. Calif.

#### BALANCE SHEET

#### CUMMINGS RANCH

December 31st, 1927

#### ASSETS

Live Stock .....	\$39,625.00
Real Estate .....	59,600.00
Buildings .....	7,780.00
Implements etc. ....	1,421.00
Lumber and mill.....	6,000.00
Deficit .....	12,636.25

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127,062.35

[75]

Capital Stock .....	\$60,000.00
Mtg J. W. Kelly.....	37,330.12
“ Bank of Tehachapi.....	9,650.00
“ Farmers & Mer. Bank.....	7,750.00
Note J. J. Lopez.....	7,000.00
“ Mrs. Geo Cummings.....	1,000.00
“ Chas. Asher .....	3,000.00
“ Guy Guerin .....	200.00
Accts payable .....	1,132.23

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127,062.35

(Testimony of Edward G. Cummings.)

December 31st. 1928

<u>ASSETS</u>	<u>LIABILITIES</u>
Live stock .....\$39,625.00	Capital stock .....\$60,000.00
Real Estate ..... 59,600.00	Mtg. J. W. Kelly..... 37,330.12
Buildings ..... 7,780.00	“ Bank of Tehachapi..... 9,650.00
Implements etc. 1,421.00	“ Farmers & Mer. Bank 5,550.00
Lumber and mill 6,000.00	Note J. J. Lopez..... 7,000.00
Deficit ..... 10,754.12	“ Mrs. Geo. Cummings.... 1,000.00
	“ Charles Asher ..... 3,000.00
	“ Guy Guerin ..... 200.00
	Accts payable ..... 1,500.00
125,180.12	125,180.12

## INCOME AND EXPENDITURE ACCOUNTS

<u>Disbursements</u>	<u>Income</u>
Rent .....\$1,645.92	cattle .....\$9,100.01
Labor ..... 602.90	Lumber ..... 182.10
	<b>[76]</b>
Gen Ranch ..... 3,033.30	Wheat ..... 943.60
Interest ..... 3,410.96	Misc. .... 99.66
Taxes ..... 440.72	10,325.37
Wages ..... 2,500.00	
Depreciation:	
Cattle .....\$1000	
Bldg., fences,	
machinery..... 500- 1,500.00	
13,133.50	
10,325.37	Notes Paid .....\$7,255.07
Loss .....\$2,808.13	By ALBERT N. CUMMINGS
	Secretary and Treasurer”

Mr. Marks: They paid a lot of their debts since then, and that is too far back to be relevant.

(Testimony of Edward G. Cummings.)

Mr. Johnston: Q. Now you have listed in your schedules here of the Cummings Ranch, that you are indebted to the Bank of Tehachapi in the sum of Twenty Seven Thousand Six Hundred and Fifty Dollars, is that approximately correct?

A. There is something else I would like to mention. There is an eight thousand dollar note that Mr. Ancker had me sign to satisfy the Bank Commissioners, which was to lay there as just a blind, or something like that, and I didn't list that, because I didn't consider I owed the Bank that money. I have no credit for that in here.

The Court: You are not going into that, are you?

Mr. Johnston: No, there is no such note as that.

[77]

Mr. Johnston: Q. I said, Mr. Cummings, that in the schedule here you had listed as owing to the Bank of Tehachapi Twenty Seven Thousand Six Hundred and Fifty Dollars?

A. Yes, I believe that is the record, the record will show what it is.

Q. You have not figured the interest on that of course? A. I have not figured anything.

Q. And that debt is secured by a Chattel Mortgage upon your cattle? A. Yes.

Q. Now Mr. Cummings, I will show you here what purports to be a Chattel Mortgage, dated November 23, 1934, by Cummings Ranch, Inc. to the Bank of Tehachapi, and recorded in Book 581 of

(Testimony of Edward G. Cummings.)

Official Records Page 455, Kern County. I will ask you if that is the Chattel Mortgage you gave to the Bank to secure the indebtedness that I spoke about?

A. Yes.

Q. Is that the Mortgage you gave them?

A. I suppose so.

Q. It is marked down here Cummings Ranch Inc., is that your signature, Edward G. Cummings, President, and your brother's signature Albert?

A. Yes.

The Chattel Mortgage referred to above reads as follows:

#### “CHATTEL MORTGAGE

This Mortgage, made this 23rd day of November, 1934 by Cummings Ranch, Incorporated, a Corporation organized and existing under the laws of the State of California, [78] County of Kern, State of California, by occupation Farming-stock-raising Mortgagor,

To Bank of Tehachapi, a corporation organized under the laws of the State of California, and having its principal place of business at Tehachapi, California, County of Kern, State of California, by occupation Banking, Mortgagee,

Witnesseth: That the said Mortgagor mortgages to the said Mortgagee all that certain personal property situated and described as follows, to-wit: All of its cattle consisting of 800 or more head of stock cattle, branded as follows, to-wit: C L, being the

(Testimony of Edward G. Cummings.)

brand used and owned by the mortgagor: said brand being on the left hip and said cattle having ear mark of crop and hole in left ear, and shoe string in right ear, together with the increase thereof.

All of the cattle located on the lands and ranges owned, leased or open by the mortgagor in the County of Kern, State of California, and in particular in the neighborhood of Cummings Valley in said County.

Also as security for any further advances made by the mortgagee to the mortgagor not exceeding in amount the sum of \$4,000.00 as an aggregate, which said advances shall be evidences by additional promissory note or notes, as the case may be.

As Security for the payment to Bank of Tehachapi the said Mortgagee of Twenty four thousand six hundred fifty Dollars, [79] lawful money of the United States of America, with interest at the rate of eight per cent per annum according to the terms and conditions of one certain promissory note of even date herewith, and in words and figures following, to-wit:

No.....

Tehachapi, Calif. November 23, 1934 \$24,650.00  
Six months afer date, without grace, for value received We promise to pay to the order of the Bank of Tehachapi at its Banking Rooms, in the Town of Tehachapi, State of California, Twenty four thousand six hundred fifty and no/100 Dollars



(Testimony of Edward G. Cummings.)

with interest from date until paid, at the rate of eight per cent per annum, said interest to be paid quarterly, and if not paid as it becomes due, to be added to the principal and become a part thereof, and bear interest at the same rate; also to pay all legal expenses and attorney's fees which may be incurred by said Bank in the collection of this note. All payments which become due by virtue hereof, are to be paid in Lawful Money of the United States.

CUMMINGS RANCH, INC.

EDWARD G. CUMMINGS,

President

ALBERT N. CUMMINGS,

Secretary

Secured by Chattel Mortgage of even date hereof.

It Is Also Agreed that if the Mortgagor shall fail to make any payments as in the promissory note provided, then the Mortgagee may take possession of the said property, using all necessary force so to do any may immediately proceed to sell the same in the manner provided by law, and from the proceeds [80] pay the whole amount of said note specified, and all costs of sale, including counsel fees not exceeding a reasonable amount the amount due, paying the overplus to the said Mortgagor, all of said costs, including said counsel fees, being hereby secured.

The Said Mortgagor does hereby state, declare and warrant, that it the sole and separate owner of

(Testimony of Edward G. Cummings.)

all the within mentioned personal property and that there are no liens or incumbrances or adverse claims of any kind whatever on any part thereof.

CUMMINGS RANCH

[Seal]

EDWARD G. CUMMINGS,

President

ALBERT N. CUMMINGS,

Secretary

State of California,  
County of Kern—ss.

On this 29 day of January, A. D. 1935 before me, Geo. R. Burris, a Notary Public in and for said County and State, personally appeared Edward G. Cummings, Known to me to be the President of Cummings Ranch, known to me, to be the person whose name is subscribed to the within Instrument, and acknowledged to me that he executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

GEO. R. BURRIS,

Notary Public in and for said County and State.

My Commission Expires October 3, 1938. [81]

State of California,  
County of Kern—ss.

Edward G. Cummings, President Cummings Ranch Mortgagor in the foregoing mortgage named and Albert Ancker, President, Bank of Tehachapi,

(Testimony of Edward G. Cummings.)

the mortgagee in said mortgage named, each being duly sworn, each for himself does depose and say: That the aforesaid mortgage is made in good faith and without any design to hinder, delay or defraud any creditor or creditors.

EDWARD G. CUMMINGS

ALBERT ANCKER,

Prs.

Subscribed and Sworn to before me this 29 day of January 1935.

GEO. R. BURRIS,

Notary Public in and for said County and State.

My Commission Expires October 3, 1938.

Mortgage Chattel Cummings Ranch, Inc. To Bank of Tehachapi

Dated November 23, 1934

Order No. 11812 When recorded, please mail this instrument to Bank of Tehachapi, Tehachapi, California

Recorded at Request of Title Insurance & Trust Co. Jun 15 1935 at 9 A. M. in Book 581 of Official Records Page 455 Kern County Records,

CHAS. H. SHOMATE,

Recorder

By FRANCES ALMANN,

Deputy Recorder. [82]

(Testimony of Edward G. Cummings.)

Q. How many head of cattle do you have now, Mr. Cummings?

A. You know as much about it as I do. There was a T.B. test there, and he tested 642, I believe, probably your keeper there turned in some more. That is every thing that was counted, there was a discrepancy in the counting of 796, seven hundred three or four.

Q. The cattle that were brought down from the mountains, when you gave the T.B. test, you had about 642?

A. Yes.

Q. Had you been able to get any more cattle down from the mountains besides those?

A. Yes, we got some more.

Q. Approximately how many more?

A. There is 146 at the ranch now.

Q. That is not what I asked you.

A. Let me tell you something. I brought down 512—some of those went back. The cows got separated from the calves, and they broke the fence the night they were separated from the calves and some of them got away.

Q. What you have got at the ranch and down here are the total number you have?

A. That is what we actually counted.

Q. Do you know that about fifteen head of your cattle are over at the Tejon Ranch?

A. No I didn't know—do you know they are?

Q. I am just telling you somebody told me that

(Testimony of Edward G. Cummings.)

—they said there was fifteen head over there at the Tejon Ranch.

A. Have they gathered all the cattle yet? [83]

Q. I don't know.

A. We naturally have cattle scattered around and it takes time to gather all of them up.

Q. What condition are these cattle in?

A. Well about the average condition in the fall.

Q. As a matter of fact are they not in poor condition—that is they are skinny?

A. No, not any more than I would say one year and another. If they were in poor condition I could not drive fifty miles in a day and a half which I did, in less than a day and a half, and if they were in poor condition, if you understand anything about mountain cattle they look a lot worse than they are. They are stronger than they look. These fall cattle feeding on salt grass, if they were in poor condition you could not drive them that far in a week. There are heifers in calving you have trouble with. The afterbirth spoils in them and they die. The cows more or less take care of those. The first cow I lost this year was a cow we put up here in the Field Ranch, and she stayed there two days and died. I didn't lose a cow this year from starvation.

Q. What are all of these cattle that you have approximately worth?      A. I don't know.

Q. As an average, are they worth Twenty Five Dollars a head?

A. I don't know whether they would be or not.

(Testimony of Edward G. Cummings.)

I can't say. I have not tried to find out, I don't know.

Q. How many years have you been in the cattle business? [84]

A. Approximately forty-five years.

Q. And you have seen these cattle—if you were going to buy these cattle today, would you pay as high as Twenty Five Dollars a head?

A. That is a different proposition, the cattle are worth more to me.

Q. I am asking you about the value?

A. The value might be Twenty or Twenty Five Dollars. Putting them on the market it depends upon conditions.

Q. Then you would say they were worth between Twenty and Twenty Five Dollars and that would be the value of the cattle?

A. I imagine so. There might be some difference on that.

Q. Now you have listed another claim in here of Mrs. Charles Asher of Tehachapi of Seven Thousand Dollars?

A. Approximately, I don't know. The original note was something over Five Thousand Dollars.

Q. And that was for merchandise, and there is a claim filed here on a promissory note signed by the Cummings Ranch and the note is for Five Thousand Four Hundred and Fifty Six Dollars and Seventeen Cents, dated May 16, 1935. Is that the



(Testimony of Edward G. Cummings.)

same claim that you have listed here for goods, wares and merchandise from Mrs. Asher?

A. Well, I imagine that is it.

Q. The Cummings Ranch don't owe her the note as well as the account? A. Oh no.

Q. It is just this one claim?

A. That is the whole claim. The original note was about Thirteen Hundred Dollars. [85]

Q. When did you start this bill for Thirteen Hundred Dollars?

A. The record could probably tell you more.

Q. About when?

A. Well when was that, 1935, or 1936, it was five or six years before that, I guess—more than that.

Q. That started in 1928 about? A. Yes.

Q. For the purpose of the record, Mr. Marks, will you let the record show this claim filed by Mrs. Asher is for Six Thousand Nine Hundred and Eighty Three Dollars and Eighty Nine Cents.

Mr. Marks: Yes, and also that is the only claim listed in the schedule for about Seven Thousand Dollars, that amounts to the same claim.

Q. Now this Chattel Mortgage of Mr. Lopez, is that on the same cattle that the Bank of Tehachapi has a Chattel Mortgage—he doesn't have any additional cattle on his mortgage does he?

A. No.

Q. And his mortgage was given after the Bank of Tehachapi mortgage? A. Sure.



(Testimony of Edward G. Cummings.)

Q. Now is there any other indebtedness that the Cummings Ranch owes besides what you have listed here in your schedule?

A. There may be some. Just like that Eight Thousand Dollars, I don't know whether it is an indebtedness or what you call it. They have a note—that is like taking candy from a baby, and I had to do it. There are a few little bills, of course, that are unpaid. [86]

Q. You have listed in your schedule household furniture belonging to the corporation, is that right? A. Yes.

Q. Owned by this corporation? A. Yes.

Q. Now will the Cummings Ranch need any money in its operations here to feed the cattle?

A. Well as far as feeding, I have hay there for the cattle that are weaned, and as soon as they are weaned I had to bring them down to this winter ranch.

Q. Have you paid the rent for the winter ranch?

A. I paid the railroad for half the rent.

Q. How much was the rent from the railroad?

A. Half of Three Twenty Eight.

Q. And then do you have a summer ranch besides that? A. Another ranch?

Q. That is from a man named McWilliams?

A. Yes.

Q. And that costs you Five Hundred Dollars?

A. Yes, probably less.

(Testimony of Edward G. Cummings.)

Q. And the ranch you spoke of is in Kern County, at Bakersfield?      A. Yes.

Q. About where?

A. Well, it is practically twelve miles south and three miles east is where it starts, and then it runs in a southerly direction about ten miles off and on that is the division fences.

Q. Now do you have to have any person in charge out there?

A. Yes, I have a man that takes care of it. [87]

Q. And what does that cost?

A. Fifty Dollars and month and fare.

Q. Besides the expense you have enumerated will there be any other additional expense?

A. Not that I know of. If I had the means I would probably give them some more care on until spring. If we have a decent spring—I never have had to feed them anything else for twenty five or thirty years I have never had to feed them any hay.

Q. Now I would like to know when you can bring these books down—how often do you come down here Mr. Cummings?

A. Well whenever I have to is all.

Q. Don't you come down here to inspect your cattle every day?      A. Every other day.

Q. When will be the next time that you have to look at your cattle?      A. Friday I guess.

Q. Can you make it next Tuesday?

A. Yes, I can if it is necessary.

(Testimony of Edward G. Cummings.)

Q. I probably won't want to examine him after I look at the books. What time will be convenient for you?

A. Ten o'clock or whatever time the Court says, whatever is agreeable to the rest of you.

Q. Is 10 o'clock convenient for you?

A. Yes.

Mr. Johnston: I want you to bring down your stock books and stock certificates and all of your books pertaining to the corporation. [88]

Cross Examination

By Mr. Marks:

Q. Mr. Cummings, your brother Albert keeps these books doesn't he? A. Yes.

Q. Wouldn't Albert be able to explain them better than you?

A. I can bring them down and I can tell you about them.

Q. The cattle on the ranch they scatter pretty much over the mountains do they not?

A. Yes.

Q. And there may be fifteen or more head at the Tejon Ranch?

A. It is possible. They drift down there, and of course when the snow comes on they naturally drift home or the other way—they probably will drift back to the camp.

Q. What would be the estimate of the number that might turn up other than those you have reported here today?

(Testimony of Edward G. Cummings.)

A. There is always less. The trucks kill them on the road, I imagine they do, because I found about sixteen of these heifers died from natural causes, and some I found on the road. One had a broken leg and another was tangled in the brush there, and was practically dead when I found him. Offsetting those, the brand I have had—and I sold about twelve head because my brother was sick in the hospital, and I sold a few head now and then, to keep him there, and the last five I sold and turned the money into the bank, so I imagine between what I have sold and what I have counted dead, and maybe there may be a few left that will offset the amount that are branded, so [89] there should be the same amount we counted last spring.

Q. How many would you estimate will show up after this that you have not got at the Tejon Ranch or some other ranch?

A. There may be another fifteen scattered around the ranch when we came down with the cattle. I know the cows broke the fence and went back to the calves, so there may be a few head.

Q. There always does show up a number of cattle after the snow drives them out of the mountains?

A. If you are gathering your cattle on the ranch you can pick them up for three years after. They are not like cattle in a pasture.

Mr. Marks: That is all.

Mr. Johnston: That is all.

Mr. Johnston: Will you swear Mr. Ancker.

ALBERT ANCKER

called as a witness, being first duly sworn, testified on direct examination as follows:

Mr. Johnston: Q. Your name is Albert Ancker?

A. Yes sir.

Mr. Marks: I want to ask Mr. Cummings another question.

Q. (To Mr. Cummings) I understand there is a school teacher the Bank has been collecting money from, where you claim there was no liability on your part? A. Yes.

Q. About how much money has been collected on that?

A. Well [90] they had me charged with Sixty Five Dollars not three years ago, and I have been paying compound interest on it. I don't know how many notes I paid for somebody else.

Mr. Marks: That is all.

Mr. Johnston: Q. (To Mr. Ancker) You are the president of the Bank of Tehachapi?

A. Yes sir.

Q. And you are familiar with the loan records of the Bank of Tehachapi on loans made to the Cummings Ranch? A. Yes.

Q. Have you a list of the loans there?

A. Yes.

Q. All right now, I will ask you if your Bank Record shows that the Cummings Ranch is indebted

(Testimony of Albert Ancker.)

to you in the sum of Twenty Seven Thousand Seven Hundred and Thirty Five Dollars principal?

A. Yes sir.

Q. And then the interest up to approximately last October amounts to about Twenty One Hundred and Ninety Three Dollars?

A. Some of it in November, October and November, yes.

Q. You don't claim any additional amount from the Cummings Ranch at all, except this above mentioned? A. That is all.

Mr. Johnston: That is all.

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Mr. Johnston: For the purpose of the record it is stipulated that the Cummings Ranch, Inc., proposal, may be read into the record.

Mr. Marks: Yes. [91]

“[Title of District Court and Cause.]

PROPOSAL FOR COMPOSITION  
OR EXTENSION

To The Honorable Samuel Taylor, Conciliation Commissioner:

The following proposal for composition or extension is hereby submitted and offered by the petitioning debtor herein:

First: That debtor will continue to operate its farm and stock ranch, described as follows, to-wit:

5009 Acre farm and stock ranch situate in Sec-



tion 31, T. 32., R. 32 E, M.D.B.&M.; and in Sections 3, 4, 5, 8, 9, 10, 14, and 16 in T. 11 N., R. 16W., S.B.B.&M., for a period of ten years from date of confirmation by the Court of agreement for composition or extension based upon this proposal.

Second: That from the gross income received therefrom there shall be first paid all necessary operating expenses in connection with the operation of said farm and stock ranch, and such sums as may be allowed by the Court and/or Conciliation Commissioner to debtor's attorney for [92] attorneys fees and Court expenses and current taxes and payments of delinquent taxes under the following plan.

Third: That debtor will pay to the County of Kern, State of California all delinquent taxes before Oct. 1st, 1939, and will pay any other taxes that may be assessed before same become delinquent, or before said date.

Fourth: That debtor will pay to the Federal Land Bank of Berkeley, Berkeley, California, the indebtedness due it of approximately \$20,000. at the rate and at the time payments may become due with the rate of interest prescribed in said mortgage on real estate which payments with interest annually is approximately \$1000.

Fifth: That debtor will pay to the Federal Land Bank of Berkeley, Berkeley, California, on the Commissioner's Loan in the sum of \$5000.00, the sum of \$1000. annually together with interest thereon as provided in said loan, payments to begin on or before Oct. 1, 1939.



Sixth: That debtor will pay to the Bank of Tehachapi of Tehachapi, California, the sum of \$18,000. with interest thereon at the rate of 5% per annum within a period of 10 years, payments to be made in the sum of \$1800. annually with interest at 5% on deferred payments during said 10 year period. Payments to begin on or before Oct. 1, 1939.

Seventh: That debtor will pay to J. J. Lopez the sum of \$3000. within 10 years, same to be paid at the rate of [93] \$300. per year with 5% interest on deferred payments, first payment to be made on or before Oct. 1, 1939.

Eighth: That debtor will pay to Mrs. Charles Asher the sum of \$2000. within 10 years, said amount to be paid at the rate of \$200. per year with interest at 5% on deferred payments, the first payment to be made on or before Oct. 1, 1939.

Ninth: That any other payments for any other indebtedness that may be due will be paid, after a 50% reduction in amount, at the rate of one-tenth each year, with interest thereon at the rate of 5%, payments to begin on or before Oct. 1, 1939.

Tenth: That the Conciliation Commissioner shall retain jurisdiction of this matter and all claims herein set out during said ten year period or until such time as such respective claims shall be fully paid.

Dated: November 19, 1938.

CUMMINGS RANCH

EDW. G. CUMMINGS, Pres

Petitioner

State of California,  
County of Kern—ss.

Edward G. Cummings, President of Cummings Ranch, Inc., a corporation being first duly sworn, deposes and says: That he has read the foregoing proposal for composition and Extension and knows the contents thereof, and that all of the [94] matters and allegations therein contained are true of his own knowledge, and that he verifies this proposal for and in behalf of the Cummings Ranch, Inc., a corporation.

EDW. G. CUMMINGS

Subscribed and sworn to before me this 19 day of November, 1938.

[Seal] WM. S. MARKS.

Notary Public in and for the County of Kern,  
State of California,"

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Mr. Johnston: I represent the Bank of Tehachapi, and the claim on file from Mrs. Asher designates Mr. Albert Ancker as attorney in fact in connection with this hearing, and other hearings, and as far as the Bank of Tehachapi is concerned they will not accept this offer or proposal for extension, and as far as Mrs. Asher is concerned, Mr. Ancker states she will not accept it.

The Court: The indebtedness to the Bank is approximately Thirty Thousand Dollars or thereabouts, and Mrs. Asher Seven Thousand Dollars or

thereabouts. That makes Thirty Seven Thousand Dollars. That is in excess of Thirty Seven Thousand Four Hundred and Fourteen Dollars and Six Cents, against Twenty Nine Thousand Nine Hundred and Twenty Eight Dollars and Forty Two Cents, and Mrs. Ashers is Sixty Nine Hundred Eighty Three Dollars and Eighty Nine Cents. If the Federal Land Banks accepts the proposal.

Mr. Greenleaf: The attorney for the Bank of [95] Tehachapi has requested a continuance until Tuesday to bring these books down, and I am going to ask for a continuance until Wednesday for a reply from my Bank at Berkeley.

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Mr. Johnston: At this time I move the Court to dismiss the proceedings and the petition filed by Cummings Ranch, Inc., for the following reasons, to-wit,

First: That there is no emergency existing as far as Cummings Ranch, Inc., is concerned.

Second: That the Cummings Ranch from the testimony in the record, shows that it will be impossible for it to refinance itself within three years.

Third: That the plan or the proposal for composition or extension submitted by Cummings Ranch is not feasible.

Fourth: That the proposal for composition and extension made is not made in good faith, but is a mere gesture, and that there is no reasonable prob-

ability of ultimate debt satisfaction within the moratorium period allowed by law.

Fifth: That the proposal for composition and extension does not give to the Bank of Tehachapi a right to retain its lien unencumbered.

Sixth: That the proposal for composition or extension so submitted by Cummings Ranch, Inc., is unconstitutional, in that it permits the alleged farmer, to-wit, the [96] Cummings Ranch, Inc., to remain in possession of the cattle which are under Chattel Mortgage given as security to pay the debt to the Bank of Tehachapi, where it is shown by the record that the Cummings Ranch, Inc.; is in such a hopeless financial condition that any extension of time would be to allow the debtor to appropriate the Mortgagee's property for the debtors benefit.

Mr. Johnston: I would like to ask a few more questions when the books are presented.

The Court: There is a motion now for a dismissal of the proceedings.

Mr. Marks: I want to ask him two or three questions.

Q. How do you estimate you can probably take care of this in three years or refinance yourself?

Mr. Johnston: Objected to as leading and suggestive. Let him ask what he can do in the next three years regarding financing, and let him explain.

Mr. Marks: You ask him the question yourself.

Mr. Marks: Q. I will ask you first how do you figure that within three years you can refinance it and then also within ten years, how do you think you can take care of it under this proposal?

The Court: I don't see where this three year proposition comes in?

Mr. Marks: There is no such proposition that he has [97] to refinance or do anything within three years.

The Court: I know, but he is using some verbage there that apprehends that the man must pay out in three years—in this proposal—he makes his proposal in good faith, and it is for the creditors to object or accept.

Mr. Marks: I will withdraw the question.

Mr. Marks: We propose that the Cummings Ranch has a saw mill on his place, which can be adjusted and operated in a way that in three years he can pay most of any indebtedness or all of the indebtedness against him.

Mr. Johnston: What are you doing, Mr. Marks, testifying?

Mr. Marks: Mr. Taylor won't let me show it.

The Court: I am not telling you you can't put it in.

Mr. Marks: I will withdraw it.

The Court: I want to rule on this motion. The first one was on the ground that the proposal does not——

Mr. Johnston: If you will continue this until Tuesday I will have the reporter write that up and give you a copy, and you can make your ruling at that time.

The Court: All right, we will continue this matter until Tuesday at 10 A. M. [98]

Bakersfield, California, November 22, 1938.

This case coming on regularly at this time, after a continuance from November 19, 1938, and all parties being present in Court, the following proceedings were had to-wit:

The Court: In the matter of Cummings Ranch, Inc., let the record show Mr. C. W. Johnston is appearing for the Bank of Tehachapi, William S. Marks, Esq., for the Cummings Ranch, Inc., and

EDWARD G. CUMMINGS

is present in Court.

Mr. Johnston: I had the Chattel Mortgage introduced for identification. I want it introduced into the record at this time.

Mr. Johnston: Q. Mr. Cummings, you have listed certain property in the Bankruptcy Petition, have you not?       A. Yes.

Q. And you have set forth after each particular piece of property, the approximate value have you not?       A. More or less, yes.

Q. When I say approximate, I mean it is approximately what the value is, is that correct?

A. More or less.

Q. What do you mean by more or less?

A. I can't say exactly—the prices change—there are variations.

Q. For instance, you mention in here one model T Ford, Fifty Dollars, that is the approximate value?       A. Yes.



(Testimony of Edward G. Cummings.)

Q. All the property that you have listed in here you put the approximate value after that?

A. Yes. [99]

Q. And the debts that you have listed in the schedule you put the approximate value of those?

A. Just as near as I could do it—I didn't know the actual amount of each debt.

Q. Now has the corporation received any income in the last year at all except from sale of cattle?

A. Last year we didn't sell—we sold a few cattle.

Q. But outside of that you have not received any income?

A. Nothing more than the living expenses from the chickens is about all.

Q. Have you received in the last five years any income, that is the corporation, except from the sale of cattle?

A. Yes, off and on we have a little revenue from the lumber business, and small affairs, people come and buy a little dry wood, a Dollar or Two a cord.

Q. That would not amount to over a Hundred Dollars a year would it?

A. The lumber would, but the revenue I turned in to the corporation.

Mr. Johnston: That is all

Mr. Johnston: I had a motion here.

The Court: I want to study it.



(Testimony of Edward G. Cummings.)

Mr. Johnston: In addition to that motion I want to include another paragraph, number seven: There is no emergency existing in this locality or in the locality where the debtor's ranch property is located.

Mr. Johnston: That is all. [100]

### Cross Examination

By Mr. Marks

Q. Now Mr. Cummings, what means have you upon which you have based your calculations in paying this indebtedness off in three years or in ten years for that matter?

A. Well up to now of course we all know that three or four years ago the cattle business was in very bad shape. The government killed a lot of cattle.

Mr. Johnston: Objected to as not responsive to the question.

The Court: Let him continue.

A. I have got them back now to where I should brand a hundred and seventy five or two hundred head of cattle, and that would justify me in selling at least one hundred and fifty head for beef, and not selling any cattle this year I have them up to three years old, where they are easily fed, they may be fattened and I could put them on the market and they would bring more money.

(Testimony of Edward G. Cummings.)

Q. What can you get for what you expect to sell next year?

A. I think Eighty Dollars would be a fair estimate.

Q. And how many head?

A. One hundred head, or four carloads, about one hundred and eight heads. I imagine eight to ten thousand dollars the coming year would be a fair estimate of what I can get.

Q. And the lumber business have you any prospective money that may be obtained from the sale of lumber?

A. Well, we [101] have forced the contract—Mr. Greenleaf has the contract that calls for Eight Thousand Dollars a year for the first two years. Of course this year I know we can't get that, and they are asking me to give them more time with the understanding that they may be able to get somebody capable of running the mill for the next year.

Q. Is there a reasonable chance of securing Six or Eight or Ten Thousand Dollars?

A. We have the equipment in the mill that would justify that. We are going on the contract of Four Dollars a thousand for the standing pine.

Mr. Johnston: How many people in the last two years have tried to operate this so called lumber mill that you've got up there—there have been three people up there haven't there trying to operate this lumber mill?      A. Yes.

(Testimony of Edward G. Cummings.)

Q. And you and your brothers and sisters and some other people used to be interested in a corporation that you formed to cut lumber up there and sell it?      A. No.

Q. Wasn't Mr. Lopez interested?

A. Yes, that Lopez is another Mr. Lopez. He is a cousin. He is the one that originated the first mill that broke down.

Q. They went broke operating the mill didn't they?

A. I guess so. They never had any experience. There has not been one man that has gone up there with sufficient money to operate the saw mill. You have to have time to dry the lumber, and to carry a big payroll. Lopez had never seen a sawmill, [102] and it was turned back to the ranch, and these people put their own sawmill on there, Mr. Hazelton and another man. Of course the market went against them, and they closed down. They didn't go broke, and then they sold out to Styler, who didn't know anything about the mill, but he had confidence in this man Smith, and Smith threw him down and started operating in the middle of the mountain, and when he spent too much money he just closed down. He didn't go broke. The mill is there and the timber is there and in good shape to start in again. It is just a question of getting someone who can run it. With the price of lumber and the amount of lumber that is required there is no reason why we cannot make some money.

(Testimony of Edward G. Cummings.)

Mr. Marks: You say considerable of that indebtedness was incurred to purchase certain Los Angeles property that was not profitable?

Mr. Johnston: He said paying off loans.

Mr. Marks: Did you spend any sums in paying out or acquiring interest of any parties in the property?

A. I did. After my father died my mother had her interest there, and it cost we estimate about Twelve Thousand Dollars to buy her out, and that was added to what we already owed.

Mr. Johnston: When was this that you did all this?

A. Well my father died about thirty three years ago.

Q. That was before you formed this corporation wasn't it? [103]      A. Yes.

Q. And all of that money was expended a long time before you started in on this corporation?

A. I understood the other day you asked me the question how did we get in debt?

Q. I asked you about 1922?

A. That started the whole thing, of course.

Mr. Marks: Was that Twelve Thousand Dollars before 1922?

A. Well I wouldn't say off hand. It was around there sometime.

The Court: That is all too remote.

Mr. Johnston: That is all.

(Testimony of Edward G. Cummings.)

The Court: The motion for dismissal stands submitted.

Mr. Johnston: How about the proposal for composition and extension—the Bank of Tehachapi and Mrs. Asher refuse to accept the proposal—that is more than fifty one percent.

The Court: The Bank of Tehachapi and Mrs. Asher?

Mr. Johnston: Yes.

The Court: No.

Mr. Johnston: The Bank of Tehachapi has *extended*—

The Court: (Interrupting) Any claim will have to be allowed before it becomes a claim. It has to be proven first.

A. How about these cattle they lost, after they had them in their possession. They lost four cows and a calf.

The Court: We will wait until the proposition has been submitted to Mr. Greenleaf's clients. That is all. [104]

State of California

County of Kern—ss.

I, Nellie G. Denslow, Do Hereby Certify, that I am the Official Phonographic Reporter of the Superior Court of the State of California, in and for the County of Kern, Department 2 thereof; that before the commencement of the within proceedings, I was duly sworn to act as Official Reporter for the

(Testimony of Edward G. Cummings.)

within-named Court, by Samuel Taylor, Conciliator; that I reported in shorthand writing the proceedings had and testimony given at the hearing of the Matter entitled as upon the first page hereof, and thereafter transcribed the same into type-writing; that the foregoing and annexed pages contain a full, true and correct statement of the proceedings had and testimony taken at the hearing of said Matter, and a full, true and correct transcript of my shorthand notes taken of the proceedings had and testimony given thereat.

Dated: December 7, 1938.

NELLIE G. DENSLOW

Official Reporter

[Endorsed]: Filed Dec. 30, 1938. [105]

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[Title of District Court and Cause.]

Bakersfield, California, January 20, 1939

HEARING ON PETITION FOR APPOINTMENT OF SUPERVISOR AND TO PLACE PROPERTY UNDER CONTROL OF COURT.

TESTIMONY

EDWARD G. CUMMINGS

Direct Examination

Q. How many more cattle have you then, do you know?

A. Well I can't tell any more, I know I got 705 branded and I counted 70 that were not branded.



RUSSELL HILL,

called as a witness on behalf of the petitioner and having been duly sworn testified as follows:

Direct Examination

By Mr. Johnston

Q. What is your name? A. Russell Hill.

Q. Where do you live? A. Keene.

Q. What is your business or occupation?

A. Ranching.

Q. How long have you been in the ranching business? A. Oh, thirty years.

Q. Do you operate a ranch of your own now?

A. A farm.

Q. You handle a ranch for someone else?

A. Yes.

Q. Who is that? A. Mr. Crofton.

Q. What is the size of that ranch, about?

A. 96,000 acres.

Mr. Marks: How many acres? A. 96,000.

Mr. Johnston: Q. And it has cattle on it?

A. Yes, sir.

Q. And you know Mr. Cummings here, don't you? A. Yes, sir.

Q. And you know the ranch that is called the Cummings Ranch up there, don't you?

A. Yes, sir.

Q. And are you familiar with the property that he leases out here near Bakersfield, that he puts his cattle on in the winter time? A. Yes, sir.



(Testimony of Russell Hill.)

Q. How long have you known the Cummings Ranch property?      A. Oh, thirty-five years.

Q. Do you recall along this fall when Mr. Gregory or Dr. Gregory was testing the cattle for tuberculosis?      A. Yes, sir.

Q. And they were being brought down from the mountains?      A. Yes, sir.

Q. And you saw his cattle at that time?

A. I did, yes.

Q. Or the cattle owned by Cummings Ranch?

A. Yes.

Q. What condition were the cattle in at that time?

A. Part of them were fairly good shape and there were some thin ones.

Q. Were there any in bad condition?

A. There were some in bad condition, yes sir.

Q. And what would you say was the cause of those cattle being in bad condition?

A. Well, they had calves, they had calves sucking them and they should have been moved a little earlier.

Q. The Cummings Ranch property is mostly hilly property, isn't it?      A. Yes, sir.

Q. And is there sufficient grass on there to graze cattle the year round?

A. Not the year round, no.

Q. About how long can you graze them there in the summer assuming you had about 700 head?

(Testimony of Russell Hill.)

A. About five months, four and a half to five months.

Q. And when should they bring them off the range up there in the fall?

A. Ordinarily about from the 1st to the 15th of September.

Q. On an average with the 700 head of cattle that Mr. Cummings has, or rather the Cummings Ranch has, with the present set-up of the property up in the mountains and this he leases down here, what, on an average, would be the approximate gross income that could be made by the Cummings Ranch per year?

A. You mean if you run the 700 head?

Q. Yes, if you run the 700 head up on the range there in the summer and brought them down here in the winter, figuring the increases, what would be each year the approximate gross income?

Mr. Marks: I think he ought to show first he knows about the kind of range there is here and on the Cummings Ranch.

Mr. Johnston: He says he has been familiar with it for thirty years.

Mr. Marks: This down here the same, where they are raised down here the same?

The Court: No controversy over the feed, he is asking him if he knows how much money the Cummings ranch people can make off of their cattle each year. You think you are qualified to answer that, Mr. Hill, that question? You don't keep in

(Testimony of Russell Hill.)

close touch with the Cummings Ranch cattle, do you?

A. Well, I have seen them go back and forth.

Q. You have made no survey of them, did you?

A. Back and forth, being neighbors.

Q. You haven't counted them?

A. No, I didn't count them.

Q. Then you don't know how much increase they have unless you knew the amount of cows he had.

Mr. Johnston: Well, in my question I said approximately 700 head.

The Court: Seven hundred head, there wouldn't be 700 cows would there?

A. Well, 700 head of stock cattle.

Mr. Cummings: That isn't a fair question to ask.

The Court: You testify, Mr. Hill, if you know.

Mr. Johnston: Q. You know these cattle he had, you have seen them, have you, approximately all of them?

A. Yes, sir.

Q. That day you were up there, there were 600 some head counted in, weren't there?

A. Yes, sir.

Q. And with this set-up that Cummings Ranch has, the amount in property up here and this down here with the cattle they have that you have seen, what could be the approximate gross income that the Cummings Ranch could make off of those cattle per year?

A. Well, I would think \$6000 or \$7000.

(Testimony of Russell Hill.)

Q. Would be the most?

A. That are sold out of them each year.

Mr. Johnston: You may cross examine.

### Cross Examination

By Mr. Marks

Q. Where is this ranch you are in charge of?

A. Kern County, up on the Tehachapis, joining on Mr. Cummings.

Q. Adjoins his ranch? A. Yes, sir.

Q. How many cattle do you graze on it?

A. Right now we have close to 6,000.

Q. And when do you take them off pasture there in the fall?

A. The ones that we sold and the ones that we get rid of, we take off in July and August.

Q. And the ones that you don't sell that you leave on the ranch, when do you move them to your winter range?

A. Well, they drift naturally by themselves onto the winter range along in September.

Q. Where is your winter range?

A. Just all in one, comes to the San Joaquin Valley, clear down on the foot of the hill; on the hills, we don't come down to the foot.

Q. You don't come to the foot at all?

A. No, just on the hill.

Q. You don't know much about the value of the grazing then or the grass in the flat, do you?

A. Well, only from what I have seen of it, I

(Testimony of Russell Hill.)

have never run cattle on the flat outside of Greenfield and Bloomfield and that was fields, some salt grass and some bermuda.

Q. Isn't that true where the pasture he has now, isn't that salt grass and different kinds of grass?

A. Yes sir, filaree.

Q. And filaree is good feed, isn't it?

A. Very good.

Q. In fact, salt grass is all right for a time?

A. Before the storms in the fall it is all right.

Q. And after the storms it isn't so good?

A. It isn't so good.

Q. But unless there are serious storms to dry it out or affect it, it will continue for some time?

A. Yes, they won't gain on it much I don't think, they will go ahead and get along, they will live on it, yes sir.

Q. Now, on what do you base your judgment that \$6,000 or \$7,000 would be what 700 head of cattle should bring, do you mean profit or gross sale?

A. Well ordinarily a person should make a profit of \$10 a head in growth and that is what they should make, I would think.

Q. That is annually?           A. Yes sir.

Mr. Marks: I believe that is all.

#### Redirect Examination

By Mr. Johnston

Q. That is \$10 a head gross?

(Testimony of Russell Hill.)

A. Well, that is what you ought to make out of them after you pay expenses and all, you should have \$10 a head clear, they ought to grow that much.

Q. You mean net?

A. Yes, besides taking care of them.

Q. Is that based on this Cummings Ranch set-up?

A. Well, I think it would be.

Mr. Johnston: That is all.

The Court: That is all.

Mr. Johnston: You haven't taken into consideration borrowed money, payment of interest on borrowed money, or anything like that? What you mean is if those cattle are turned loose and allowed to run without anyone watching them or any help?

A. Well no, I would say they ordinarily should after his running expenses would be taken out, they ought to clear him \$10 a head for the year.

Q. That includes the expense he had to take in shipping them, back and forth?

A. Yes, his running expense.

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(Questions propounded by the Court, and answers given by

ALBERT ANCKER,

President of Bank of Tehachapi, Appellant.)

Q. By The Court: That is true, but renewed in '34 but since then you have loaned several thousand dollars?

A. Yes.



(Testimony of Albert Ancker.)

Q. And you knew what kind of business Mr. Cummings was doing, didn't you?

A. Certainly.

Q. He has reported to you how many head of cattle he had all the time hasn't he?

A. I took his word for it, certainly.

Q. Took his word for it?           A. Certainly.

Q. And you were satisfied the way he was running his business?

A. I had to be satisfied because I didn't want to cripple him.

Q. And you were continually loaning money and now Mr. Johnston is trying to show that Mr. Cummings can't possibly make it?

A. He can't because he hasn't done it.

Q. For a number of years he hasn't been able to make a go of it, yet you, with your eyes open, have loaned this man several thousand dollars and you knew his business, you knew what he could make and couldn't make. He kept you informed and you had every chance to find out whether his business was paying or not, yet you were willing to loan him the money. I want the record to show that.

A. Can I answer you?

Q. Yes.

A. It is because I have been 46 years in the bank and this is the second time I have only foreclosed. I have been easy with them; that is what is the matter.



(Testimony of Albert Ancker.)

Q. I am not criticizing you for foreclosing, but why did you loan him this money all along for several years?

A. Because I thought he was honest and straight; that is the reason.

Q. Did you know he was going behind?

A. No sir.

Q. Did you try to find out if he was going behind?

A. I loaned him as thousands of others I have loaned in there.

The Court: It seems to me it comes rather late to complain about the way he is running his business now when you had all these years in the past to cut him off and say, "you are not going to get any money to run the ranch, you can't possibly make it." But you went ahead and loaned thousands of dollars.

(Reporter's Transcript of evidence taken January 20, 1939, commencing at page 56, line 5, to the end of line 13, on page 57)

The Court: Yes, but a review of this loan would show it is increasing all the time.

Mr. Ancker: Yes, increasing, the loan, certainly.

The Court: And still you keep on. If you want to throw your money away, whose fault is it but your own?

Mr. Ancker: Is that the case because I should lose it now?

(Testimony of Albert Ancker.)

The Court: No, this man is asking the Court to give him three years time and a chance to rehabilitate himself and the law has every intention of giving it to him.

Mr. Ancker: Yes, sir.

The Court: Unless you can show it is absolutely impossible for him ever to come out.

(Reporter's Transcript of evidence taken January 20, 1939, commencing at page 58, line 3, to the end of line 15, page 58).

[Endorsed]: Filed Feb. 7, 1939.

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[Endorsed]: No. 9409. United States Circuit Court of Appeals for the Ninth Circuit. Bank of Tehachapi, a corporation, Appellant, vs. Cummings Ranch, Inc., a corporation, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Northern Division.

Filed December 28, 1939.

PAUL P. O'BRIEN,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

United States Circuit Court of Appeals  
For The Ninth Circuit

No. 9409

In the Matter of

CUMMINGS RANCH, INC., a corporation,  
Bankrupt.

APPELLANT'S DESIGNATION OF THE  
PART OF THE RECORD DEEMED  
NECESSARY AND STATEMENT OF  
POINTS.

Comes now Appellant, Bank of Tehachapi, and hereby designates part of the record which it thinks necessary for the consideration thereof, together with a concise statement of the points on which appellant intends to rely on the appeal. Said designation is as follows, to-wit:

1. Reporter's Transcript of testimony and proceedings of November 19, 1938 before Conciliation Commissioner Samuel Taylor, including Exhibits attached to said transcript.

2. Conciliation Commissioner's Order Fixing Rentals, etc., as attached to petition for writ of review of appellant, which petition was filed with the Clerk of the District Court on February 15, 1939.

3. Judgment of Judge Leon R. Yankwich, dated March 2, 1939, reversing Conciliation Commissioner's Orders of January 20, 1939, and February 2, 1939.

4. Petitions for Writ of Review of Bank of Tehachapi upon Conciliation Commissioner's Orders of March 25, 1939 and April 5, 1939, together with the Certificate of Conciliation Commissioner, all filed with Clerk on May 9, 1939.

5. The judgment of Judge Leon R. Yankwich appealed from, dated October 23, 1939.

6. The Notice of Appeal, with date of filing.

7. Testimony in transcript of evidence taken before Conciliation Commissioner on January 20, 1939, commencing at page 56, line 5, with the words "by the Court" to the end of line 13, on page 57, and commencing on page 58, at line 3, to the end of line 15 on page 58. Said testimony referred to herein being attached hereto, marked Exhibit "A".

STATEMENT OF POINTS ON WHICH  
APPELLANT INTENDS TO RELY:

I.

That the Bankrupt's petition should be dismissed because:

(1) There is no reasonable probability of ultimate debt satisfaction within the three years' period.

(2) There is no emergency existing so far as the debtor is concerned nor is there any emergency existing in the locality where the debtor's ranch is located.

(3) That the debtor cannot refinance itself within a three year period, nor is there any way by which there can be financial rehabilitation of the debtor.

(4) The Bankrupt has not offered any equitable or feasible plan for the liquidation of the secured debts of this petitioner, or debts of any other creditors within three years or any other time.

## II.

That the Bank of Tehachapi should be given authority to foreclose its chattel mortgage and take any other legal steps provided in said chattel mortgage and by law to enforce payment of its indebtedness secured by said chattel mortgage because

(1) of the reasons mentioned in 1, 2, and 3 under paragraph I hereof:

(2) That to allow Cummings Ranch, Inc. to retain possession of the cattle for any time when it is shown by the testimony of Cummings Ranch, Inc. that its financial condition is such that it is hopeless for the debtor to ever settle its debts by any extension, is to allow the debtor to appropriate the mortgagee's property for debtor's benefit;

(3) It does not give the mortgagee its lien pursuant to the terms of said chattel mortgage upon the cattle.

## III.

That the order of the Conciliation Commissioner fixing rental etc. dated April 5, 1939 and order of Judge Leon R. Yankwich, dated October 23, 1939 are in error because:

(1) For the reasons set forth in 1 to 3 inclusive under paragraph I and in 1 to 3 inclusive under paragraph II.

(2) The rental value was fixed upon property not owned by debtor.

(3) No evidence is before the Court to make a finding that the Conciliation Commissioner had fully complied with the order of March 2, 1939, regarding appointment of supervisor and sale of cattle to bring at least \$10,000.00, or that any sum had been obtained for the sale of cattle.

(4) No evidence is before the court to make a finding that \$6000.00 is reasonable rental as it existed prior to sale of cattle.

(5) No evidence is before the court to make an order that \$10,404.00 or any other sum had been paid by Bankrupt to Bank of Tehachapi.

Dated: January 6, 1940.

T. N. HARVEY

C. W. JOHNSTON

CLAUDE F. BAKER

Attorneys for Appellant,  
Bank of Tehachapi

[Note: Exhibit A attached hereto is omitted as same is already set forth at page 80 of this printed record as "Testimony taken before Conciliation Commissioner on January 20, 1939".]

State of California,  
County of Kern—ss.

Katherine Stauss, being first duly sworn, deposes and says:

That she is a citizen of the United States, and a resident of the County of Kern, State of California;

that she is over the age of eighteen years, and not a party to the above-entitled cause; that she is a clerk in the office of Harvey, Johnston & Baker, who are attorneys for Bank of Tehachapi, Appellant herein; that on the 6th day of January, 1940, she placed a copy of the foregoing "Appellant's Designation of the Part of the Record Deemed Necessary And Statement of Points" in an envelope addressed to Samuel L. Kurland, Attorney at Law, 712 Chester Williams Building, Los Angeles, California, the attorney for the bankrupt and Appellee in said matter, sealed said envelope and deposited it in the United States Mail at Bakersfield, California, with the postage thereon fully prepaid; and that there is a regular communication by mail between the City of Bakersfield and the City of Los Angeles.

KATHERINE STAUSS

Subscribed and sworn to before me this 6th day of January, 1940.

[Seal] C. W. JOHNSTON

Notary Public in and for the County of Kern,  
State of California.

[Endorsed]: Filed Jan. 8, 1940. Paul P. O'Brien,  
Clerk.



[Title of Circuit Court of Appeals and Cause.]

APPELLEE'S DESIGNATION OF  
CONTENTS OF RECORD ON APPEAL.

Cummings Ranch, Inc., the appellee in the above entitled cause, does hereby designate the following record, proceedings and evidence to be contained in the record on appeal, in addition to such matter designated by the appellant:

1. That portion of the testimony taken before the Conciliation Commissioner on the 20th day of January, 1939, in the above entitled cause, and appearing in the transcript of the testimony of Edward G. Cummings, the President of the defendant corporation, on page 10 from line 16 to line 18, inclusive, and reading as follows:

“Q. How many more cattle have you then, do you know?

A. Well I can't tell any more, I know I got 705 branded and I counted 70 that were not branded.”

2. That portion of the proceedings referred to in No. 1 hereof, consisting of all of the testimony of the witness Russell Hill, a witness called by the appellant, which said testimony begins on page 35 of the transcript of the hearing of January 20, 1939, and ends on page 41 thereof, at line 10.

Dated: January 20, 1940.

WILLIAM S. MARKS and  
S. L. KURLAND

By S. L. KURLAND

Attorneys for Appellee.

[Affidavit of Service]

[Endorsed]: Filed Jan. 22, 1940. Paul P.  
O'Brien, Clerk.

